

6573.a.4.
T H E
Form of Proceſs,
BEFORE THE
L O R D S
O F
COUNCIL and SESSION,
Observed in } ADVOCATIONS,
 } ORDINARY ACTIONS,
 } SUSPENSIONS.

Shewing alſo, the manner of making *Proteſtations for Re-
medy in Law*, and how Summons thereon was brought
before the Parliament of *Scotland*; and the way how ſince
the Union, ſuch Proceſs is laid before the Houſe of *Peers*.

W I T H

The *Form of Proceſs* before the LORDS of *Session*, as Com-
miſſioners appointed by Parliament, for Plantation of
Kirks, Valuation and Sale of Tythes.

To all which is Prefix'd

The Preſent State of the
COLLEGE of JUSTICE,

Giving an Account of the Members thereof, and of the
Order Observed by the LORDS of *Session* in Judging
Causes; with the Fees and Prices of Writs Paid to the
ſeveral Offices and Members of the *Session*.

*Written for the Uſe of the Students in Spotſwood's College of
Law*, by JOHN SPOTISWOOD of That-Ilk *Advocat*.

Edinburgh, Printed by John Moncur, at his Printing-Houſe
at the Foot of the Bull Cloſs, oppoſite to the Trone, and
Sold by John Vallance and other Bookſellers, 1711.



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To the Honourable,

Sir DAVID DALRYMPLE
of *HALES*,

Her MAJESTY'S Advocat in
SCOTLAND.

My Lord,

I Dedicat this Treatise to Your
Lordship of design, not to In-
struct You in what You want to
know, since every one have daily suf-
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ficient Proofs of your Intimat Knowledge in all the Parts of Law ; But to give you the best Testimony, I could afford, of my great respect to your Lordship, being thereunto guided, not by your high Preferments, or Power, but by your own Personal Merit ; For long before you was either Her Majesty's Solicitor, or Lord Advocat, I made known my purpose of having this Title of Law go Abroad with th' Inscription of your Name, and to make it worthy of your Acceptation, I've taken time to polish, and others, well skill'd in this Title, have given me the favour to revise and to approve it, so that I may presume to say, this Treatise I present you with, is a compleat *Form of Process before the Lords of Session*, according to the present Practique, Acts of Parliament, and Acts of Sederunt, preceeding the first of *June* 1711.

I lay likewise before you a short account of the present State of the Colledge of Justice, having forborn to mention

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tion any thing concerning the several States of it in Ancient Times, for tho' this well deserves the Consideration of Curious Gentlemen and Lawyers ; Yet, for me to make it worthy of their Reading, more time must be employ'd, and more encouragement should be given, than I have at present, nor can that be done in a few Sheets, which I very well know from the Labour I have been at in gathering some Memoires for an History of our Ancient and Modern Civil Government, Laws, and Judicatories.

In the Treatise concerning the Form of Proceſs, I've only acted the part of a Narrater of what in Practique is done, and of what the Statute requires to be done, without giving any obſervation upon theſe, or Inſinuating what ſhould be farther enacted, to make th' obtaining of Juſtice, more Expeditious, and leſs Expensive, for that, is neither my Province, nor have I Authority to make ſuch Suggeſtions, and therefore I leave theſe Thoughts to your Lordſhips ſtronger Judge-

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Judgement, and to that of my Lords the
Judges in the Session my Superiors.

I desire your Lordship would take
this offering in good part, That you'd
continue me in the number of your
Friends, and give me Opportunitie, to
shew how much I am with all sincerity.

My Lord,

Your Lordships

most Humble, Obliged,

and very Affectionat Servant,

J. Spotiswood.

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I*T is more than Nine Years since this Treatise was Compos'd, and according to the alterations in the Form of Procedure in the Session, from time to time Corrected and Amended; it was undertaken for the use of the Students in the Authors College of the Law of Scotland, and Tearly improved according to his Progress in Knowledge, He proposes in it, to give The General Form of Proces &c. That's common to all Actions, whatever, and this he thinks fit to Advertise the Reader of, that he may not think the Book imperfect for want of such things as are peculiar to any particular Action; The Author does publickly own his obligations to Gavin Hamilton, William Wilton and Alexander Finlayson Clerks, in the Outter-house, who have been helpful to him in Revising and Correcting this Treatise; and yet notwithstanding all the cares the Author and these*
his

To the Reader,

his worthy Freinds have taken, there may be some mistakes and Omissions, which others may perceive. But as these are the Consequences of Humane Frailty, it is expected that the Gentle Reader, will not think the less of the undertaking, which may be of great use to him, and to make it so, all possible Labour has been employ'd. It is not pretended, that this Form is, or, should be permanent and unchangeable, for the Nature of the thing will not admit of it, as humane Affairs do daily alter in their Circumstances, so the Laws concerning these, must be made conform, and are therefore Mutable. But whatever alterations, the Form of Process in the Session shall suffer hereafter, the Reader may lay his account, that, at this time, it is, according to what's here delivered, and the present State of things being once known, an Atentive and constant eye, will easily perceive and know the Changes that happen from time to time. As the Author Reckons, upon Changes in the Form of Process, so he purposes to Publish Annually at the Anniversary meeting of the Faculty of Advocats, an account of these Variations. And if this Treatise admit of after-Editions, to Correct, and in the proper places, to amend it accordingly.

Upon a Review, since the Printing, th' Author has observed some parts which must be Corrected, and others that want to be more fully and clearly expressed, wherefore that the Reader may not fall into any Mistake, he is desired to notice the Amendments following,

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Page 50, Line 7. *It is said. that Actions of bonorum and of Sales, are called by way of Act, whereas they must be call'd as Ordinary Summons.*

In the Sequel of the same Paragraph, it is said, that when, in Processess of Sale, the Pursuers insists to Force the Creditors to produce their interests, &c. That the Summons of Sale may be Inrol'd in the Regulation Roll, whereas such Summons must be put in the Roll for Ordinary Actions.

Page 52, towards the end Pag 78. § 1 *Concerning the Debarring of Defenders, who are Denounced, and Registred to the Horn. It is to be observed, that if either the Lybel, or Alledgance be Referred to the Defenders Oath, he cannot be, by Horning Debarred from Deponing, or from getting a day Assigned for that effect, as has been decided July 15 1624 Dickson against L. Coldingknows, in which Case, the Lords found that the Pursuer, could not, by Horning, Debarr the Defender, to Depone, seeing, for his Probation, he craved, and had Wairned him to Compear to give, his Oath, and therefore could not refuse that whereof himself had made Election, and which was desired by him, for the Lords thought it a severe Consequence, to hold the Defender pro Confesso, for not giving Oath, and yet to hinder him to give it, upon Account of which Decision, my Lord Durie adverts, that almost in all Causes this Reason may Exclude the Pursuers or Defenders by Horning, for it may*

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be alledged, that seeing Defenders are Summoned to hear Decreets given against them, or else to alledge a Cause in the contraire, he ought not to be Debarred by Horning, to Prepone lawfully that, which, by the Pursuers Summons, he is Permitted and Required to do ; and yet in that Case, Defenders are Debarred by Horning, and July 12 1676, the Lords would not sustain Horning to debarr a Defender, where his Personal presence is required by the Pursuer, and is absolutely necessar. The Case in Pag 78 is founded upon a Decision June 8. 1624. Where in Discussing a Suspension of a Decreet against a Defender holden Pro confesso, at the time he was at the Horn, The Lords found, that his being at the Horn (Which was the Cause of not Compearance) should keep him from being holden as confest, albeit it was in his own Cause, whereto he was Summond, and the Pursuer obtruded no Horning against him, and tho' it was his own default he did not Relax to give himself Personam standi to Compear ; But this Decision, says my Lord Durie, is of an evil preprative, for thereby the Rebels are in better Case, than the Kings free and Obedient Subjects, who being Lawfully Cited, will be holden as confest, and will not be Reponed against Decreets, unless lawful Excuse, such as that of Sicknes, or the lyke, duely verified, they purge themselves of Contumacy,

pag 61 in the end of the second Paragraph, it is said, that the Lord Reporter comes to the Outter-House Barr, to Intimat the Answer

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given by the Lords, in the Matter Reported, whereas, that is now in desuetude, yet, it were to be wished, that this Custome were renew'd, because the Process Stops, until the Lords give Interloquitor upon the Point in doubt, and either, the Parties, when this is notified, do proceed, to propound other and new exceptions, or the Ordinary pronounces Interloquitor, for Act or Decreet, which cannot be done without an occasion of hearing, that is given, by the Ordinarys coming to the Outter-House, not so much of designe to intimat the Lords Answer, as to proceed in the Process where it last left off. The non observance of this Ancient custome, is a Retardment of Justice.

Pag 77. § 3. It is said, that a Defender out of the Country, may not be Summon'd to give his Oath of Verity, without the Lords deliverance, which was the Ancient practice, but at this present time, one Cited at the Mercat Cross of Edinburgh, Pear and Shoar of Leith, will be holden pro confesso, in Matters referred to his Oath, which cannot be done in the Country, without he be Personally Apprehended, yet nevertheless, one out of the Country, and in that manner, holden as Confest, will easily, be Reponed against that Decreet in Absence.

Page 47. last Lyne, It is said, that the Lords at Adviseing Concluded Causes, receive Writs instantly produced, which is the Practick when no Decreet of Circumduction is Extracted ; But it is to be observed, that after Dereet is Extract-
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ed, no more Writs can be Produced, except the Party who is to make use of the Writs, be reponed: But at present, Decrets of Circumduction are seldom Extracted.

Page 88. To what is said in the first §, is to be added, but if the Defender, have not his Diligence ready to produce to the Clerk, (without which he will not get second Diligence,) when the Pursuer Calls his Act, in order, to get at any time thereafter, a second Diligence, he must Extract for himself an Act; and at Calling thereof, produce his first Diligence duly Executed, and then crave second Diligence.

Page 93. § 1. as to Circumductions, it is to be noticed, that in the Case of Acts before Answer; The Decreet of Circumduction for not Proving, will not Operate a Sentence Definitive, for great Avisandum must be made with the Debate in order to get the Relevancy thereof Determined, and for that end, the Cause is Enrolled, in the Ordinary Action Roll for the Inner-house; however in these Cases, the Lords, upon Application, Remit the Cause to the former, or any other, Ordinary.

Page 94. § 1. Towards the end, concerning Expenses given to Witnesses, &c. Cited by a Diligence, This is to be added, that sometimes, when the Party is Absent, The Lord Ordinary upon Oaths and Witnesses, grants Summar Caption, directed to Macers, Empowering them to Seize and Imprison the Agent, until he pay to the Witnesses, the Modified Expenses.

Page 96, Near the end, in Purgeing of Witnesses, they are to Swear, that they are not to gain or lose in the Cause, which is omitted.

Page 119 § 1st. Concerning the order of Calling Ordinary Actions belonging to the Inner-house, It is to be noticed, that some Enrol their Cause, as well in the Roll of Actions to be prepared as in that of Ordinary Actions, whereby, in due Course it is prepared, and thereafter, they put their Cause in the Roll of Concluded Causes. Thereby, having two opportunities of being called and heard.

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The Present State of the College of Justice, giving an Account of the Members thereof, and of the Order observ'd by the Lords of Session, in Judging Causes, with the Fees payed to the several Offices, and Members of the Session.

THE College of Justice was Instituted after the Model of the Parliament of Paris, and Erected by King James the Fifth, in the Year 1532, Confirmed by the Pope in 1534, and Ratified in Parliament 1537, it is come in place of a Court called the Council and Session, which in the Days of our forgoing Princes was the Supreme Judicatory for all Civil Causes, and this Court, had so far taken Root, and is still in Remembrance, that the Senators of the College of Justice, are at this day called by it, the Lords of Council and Session, and so designed in all Petitions or Bills presented to them.

The Lords of Council and Session are named by the Sovereign, and are either Ordinary or Extraordinary, the Ordinary Lords are Fifteen Laicks, concerning whom 'tis by Act of Parliament declared, that the King is to present Men fearing GOD, of good Learning, Knowledge and Practice of the Laws, having sufficient of their own, and by the same Act which is

132 Parl. xii Ja. 6. It is further Statuted, That no Man is to be received a Lord of the Session, unless he be try'd and known by the King and Lords, and have in yearly Rent One Thousand Merks, or Twenty Chalders of Viſtual, and be of Age, at least of Twenty Five Years compleat, otherwise his Presentation and Admission to be null. And by the Nineteenth Article of the Treaty of Union of the two Kingdoms of Scotland and England, it is Statuted, that none shall be named by Her Majesty or Her Royal Successors to be Ordinary Lords of Session, but such as had served in the College of Justice as Advocats or Principal Clerks of Session, for the space of Five Years, or as Writers to the Signet for the space of Ten Years, with this Provision, that no Writer to the Signet can be capable to be admitted a Lord of the Session, unless he undergoe privat and publick Tryal in the Civil Law before the Faculty of Advocats and be found by them qualified for the said Office, two Years before he be named to be a Lord of Session: Nevertheless the Qualifications for capacitating Persons to be named Ordinary Lords of Session, may be altered by the Parliament of Great Britain. The Extraordinary Lords, besides the Chancellour, are Four, and can be no more, they are generally Noblemen, whom the Queen, names, they may Reason, and are admitted to Vote with the other Lords, which was not allowed at the Beginning, they have no Sallary for being

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being Lords of Session, as the others have.

The Lords Ordinary and Extraordinary, are not changeable at the Sovereign's Pleasure, as in former Reigns, for they have Right to continue in that Office during Life, or *quam diu se bene gesserint*.

The Chancellour by vertue of his Office, is President in all the Civil Courts and Judicatories in Scotland, as Session, Secret Council &c. tho' not in the Exchequer where the Lord Treasurer presides, nor in the Criminal Court, in which the Justice General is President, the Chancellour takes place of all the Laicks of what Dignity or Degree soever they be, next to the Royal Family.

One of the Fifteen Ordinary Lords, named by Her Majesty, is by Institution of the College of Justice, ordained constantly to preside in the Court, and therefore is called the President, of the Session, or, of the College of Justice, he declares to the Advocats the Points of Law, or Fact, they are to Plead upon, directs them in their Debate, and, signs all Interlocutors, in name of the rest.

The Ordinary Lords are admitted upon a Tryal, thus, when any person is presented by Her Majesty, to be a Lord of Session, they sit three Days beside the Lord Ordinary in the Outer-house, where they have Inspection of the Processes, which, by reason of Intricacy or Difficulty, are taken to *Avisandum*, in order to get the Answer of the whole Lords,

and, the *Lord Probationer* Reports the *Pleading* of the *Advocats*, and the *Points* whereupon *Interloquitor* is craved, in Presence of the whole *Lords*, in the same way and manner as is done by any *Ordinary*, both Parties putting into the *Lord's Boxes*, *Informations* in the *Case*; After the *Probationer* has finisht *Report*, and the *Lords* have among themselves reasoned on the matter, the *President* collects the *Votes*, and the *Probationer* tells his Opinion first, whereas in other *Reports*, the *Lord Reporter* votes last; and for compleating the *Trial*, the *Probationer* sits one day in the *Inner-house*, and after any *Dispute* is brought to a Period, and the *Lords* are about to advise the same, in order to *Pronounceing* their *Interloquitor*, the *Lord Probationer* resumes the *Dispute*, and, first of all, gives his Opinion therein, in presence of the whole *Lords*, after which if he is found *Qualified*, he is that same day *Admitted*, puts on his *Gown*, and takes place in the *Bench*, and does *Business* with the other *Lords*.

Nine of the *Ordinary Lords* are necessary to make a *Quorum* in the *Inner-house*.

The *Lords of Session* are the only *Sovereign Judges* in all *Civil Causes*, they *Advocat*, or take, to themselves, *Causes* from *Inferiour Courts*, when they find that the *Judges* are either *incompetent*, or have committed *Iniquity*, on which Account also, they *Reduce* their *Sentences* and

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Decreets, and suspend all Execution thereupon; yea, further, they can upon Account of Informality &c. reduce and suspend their own Sentences, they are, by their Constitution, and Acts of Parliament, impower'd to appoint Rules and Orders to be observed by all the Leiges in the Distribution of Justice, they Admit Advocats, and Notars.

The Rank and Precedencie of the Lords is, that next to Sons of Earls they are the first Gentlemen in Scotland, & in publick Appearances go next to them and to the Nobility, & that the Respect due to them, from the people may be more established, they are prohibited to possess any Inferiour Office, as Commissariots, Deputations from Sheriffs, Admirals, or the like, under the pain of Deprivation of their place in the Session.

The place of Judicature, is always in Edinburgh, the cheif City of Scotland, where there is a convenient house set apart for their Meeting, and which from the cheif Design in building of it, is called the *Parliament-House* and sometimes the *Session-House*: It was built by the Citizens of *Edinburgh* in the Reign of King *Charles* the first, in the Year 1636; till this House was built the Lords did sit in a place which they called the *Tolbooth*, and is above the Room where at this day the *Justiciary* convene to judge *Criminal Matters*.

To judge Causes, the Lords meet two times

in the Year, which is called the *Session*, and is known by the two different Seasons, the one being called the *Summer-Session*, and the other the *Winter-Session*, the first whereof begins the first of *June*, and continues till the last day of *July*, at Twelve of the Clock, the other again begins upon the first day of *November*, and lasts till the last day of *February*, at Twelve a Clock, the rest of the Year is called *Vacance*; So that, the whole Year is equally divided into *Session*; and *Vacance*; from the beginning to the rising of the *Session*, there are no *Vacation Days*, except the *Aniversaries* appointed by the *Acts of Parliament* to be observ'd, such as the Fifth of *November*, set a part as a *Thanksgiving Day* in Commemoration of our Deliverance from the *Popish Powder Plot*, and the Thirtieth of *January*, a Day of *Humiliation*, for the *Horrid Murder of King Charles 1st.* and the *Birth Day of Our Sovereign Regnant* for the time, with these Days, occasionally set a part by the Government for a *Thanksgiving* or for *Fasting*, and there is no Surcease of *Justice*, upon the stated *Festivals* of the *Church*.

The *Lords* meet all the days of the Week, except *Munday*, which is set a part, that the *Advocats* may consult, and prepare their *Causes*, to be called, and judged in the Week ensuing, so that there are Five *Session Days* in a *Week*, they meet always about Nine in the Morn-

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Morning, To this Meeting the Members of the College of Justice, are warn'd by ringing of a Bell, called the Session Bell, and the Lords sit judging Causes, from the Hour of their Meeting, till Twelve a Clock, of which they are advertised by a Cryer, one of the Chief Keepers of the Session House, they very seldom meet in the Afternoon, nor are they tyed to such Meetings by their Constitution, however upon extraordinary Occasions, or, when the Causes are many, as in the end of the Session, they do meet in a body, and Judge Causes in the Afternoon.

There are two Houses, the one separat from the other, appropriated for Judging Causes: In the first whereof, called the Inner-house, (which is a large square Room) the Lords meet in a full Body, and sit at a Bench raised above the Floor two or three Steps, that they may be seen by all, and is in fashion of an Amphitheatre, over against this, is the Barr like a Diameter Line, ~~which~~ at which the Advocats stand, when they Plead, and between the Barr and the Bench, there is a spacious Area, where is plac'd a large square Table, at which the Lord Register, with the Principal Clerks of Session, do sit; none but the Judges, Noblemen, dignified Clergy-Men, and the King or Queens Advocat, are allow'd to be covered, and by the Ancient Custom, no person of whatsoever Quality were permitted

mitted to come within the *Barr* of the *Inner-house*, during the time of *Debating Causes*, except Her *Majestie's Advocat*, the *Clerks of Session*, the *Clerk to the Bills* and his *Deputs*, and one *Macer*; Which Custom, the *Lords* by an *Act of Sederunt* in *December 1686*, revived, and they ordained the same to be duly observed in time coming, *discharging* the *Macers*, to permitt any persons, except those above expressed, to come within the said *Barr*, as they will be answerable on their *Peril*, and in case any person be desirous to speak with any of the *Lords*, while they are upon the *Bench*, he must call for a *Macer* at the door, and give notice thereof by him; however the *Lord Treasurer*, *Treasurer Deput*, *Commissioners of Treasury*, not being of the *Bench*, are by that *Act* allow'd to be within the *Barr*, when the *King's Causes* are called and debated, and no otherways.

The *Outer-house*, is a most spacious *Hall*, adjoining to the *Inner-house*, wherewith there is a *Communication* by two *Doors*; The *Bench* on which the *Lord Ordinary* in the *Outer-house* sits, is very high, before which and much lower is the *Table* for the *Under Clerks*, then there is a void, that *Parties* and *Witnesses* come into, for making *Faith*; beyond this, is the *Barr* where stand the *Advocats*, that *Plead* before this *Ordinary*, behind which *Barr*, is a spacious large *Square Area*, where
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and who is privileg'd to *Report* during the following Week.

The whole *Lords* except the *President*, come to the *Outter-house*, according to their *Seniority*, and are changed weekly, this *Course* cannot be altered, and one *Lord* is not allow'd to serve in the *Outter-house* for another, each *Tuesday*, at ten of the Clock, the *President* delivers to the *Ordinary* in the *Outter-house* for that Week, two *Rolls* of *Causes*, one of *Advocations* and *Suspensions* &c. the other of *Ordinary Actions*, and desires him to go to the *Outter-house*, and he accordingly goes, and on *Tuesday* betwixt *Ten* and *Twelve* he *Judges* the *Causes* in the *Suspension* and *Advocation Roll*, and is attended by a *Macer*, who reads audibly the Names of the *Pursuers* and *Defenders*, and calls to the *Barr* the *Advocats* for the Parties, who accordingly *Compear* and *Plead* their *Clients Cause*; And thus the *Ordinary* continues, *Calling* and *Judging Causes*, till *Twelve* of the Clock, whereof he is adverts'd by *Ringing* of a *Small Bell*, which hings in the *Outter-house*: when he comes out upon *Wednesday* at *Ten* of the Clock, the *Outter-house Clerks* deliver to his *Lordship*, a *Roll* of their *Acts* to be called that *Day*, beginning at the *Roll* of the *Clerk* who sits upon the *Right Hand*, and so through the *Rest* in *Order*; for it is to be observ'd, that albeit the *Clerks*, take place at the *Table*

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according to their Seniority of Admission, whereof the Eldest admitted hath his first Choice, and the second has the next, and so furth; Yet their *Summons*, and *Acts* are not called in that Order; For the Clerk on the Right Hand begins to Call; and the rest follow in the same Order.

When the Ordinary has called all the Acts in the several Act-Rolls of that Day, he proceeds to his Roll of *Suspensions* and *Advocations*, where he left off the day preceeding, but in case any of the *Causes* called upon *Tuesday* had been continued till *Wednesday*, and so marked in the Roll, he calls first these *Causes*, and if he had finished his Roll the day before, he either returns to the *Inner-house*, or calls *Causes* in the Roll of *Ordinary Actions*, but this is not done except upon the *Tuesday*, the Ordinary forseeing, that the Business appointed for *Wednesday*, would be determined long before Twelve of the Clock, he had advertised the *Advocats*, that upon *Wednesday* after calling of the *Acts*, and after finishing his *Suspension &c. Roll*, he would call the *Causes* in the *Regulation Roll* of *ordinary Actions*.

If the Ordinary has not called and gone through all the *Causes* in the *Suspension Roll*, these that were not called, are inserted in the next Weeks Roll, in order to be Judged by the next Weeks Ordinary in the *Outer-house*.

On *Thursday* at Ten of the Clock, the same *Ordinary* begins his *Roll of Ordinary Actions*, and continues, *Judging the Causes* therein, till Twelve.

On *Friday* at Ten of the Clock he calls the *Act Rolls* of the *Clerks* in the same manner as was done upon *Wednesday*, after the finishing whereof, he proceeds in his *Roll of ordinary Actions*, and in case he has not got through that *Roll*, the *Causes* not called, are inserted in the *ordinary Action Roll*, for the ensuing Week.

Some *Ordinaries* call for *Additional Rolls*, both of *Advocations* and *Suspensions*, and *ordinary Actions*, which the *Keeper* of the *Book of Inrolement*, must post upon the *Wall* the night preceeding the day, whereon these *Causes* are to be called, that the *Advocats* may be timeously advertised, and make necessary Preparation for their *Pleading*. But this making *Additional Rolls*, is now in desuetude.

On *Saturday* at Ten of the Clock, the *Ordinary* calls out of that Weeks *Rolls*, either of *Advocations* and *Suspensions*, or of *ordinary Actions*, the *Causes* which were continued and delayed till that day, if any be, after which, he calls the *Causes* which are put into a *Hand-Roll*, posted on the *Wall* of the *Session-House* the Night preceeding, this *Hand-Roll* contains the *Causes* which had been in former *Rolls*, and which are brought to Conclusion,

clusion, and where either Party crave to be further *heard*, or seek *Interloquitor*, to be helped or alter'd, and this *Roll*, is to contain in the first place, the *Causes* which were in the *Outter-house* *Rolls* of that Week, which must be discuss't before other *Causes*, which were in other *Rolls* preceeding.

When *Witnesses*, or *Partys*, are to *Depone*, they compear before the *Ordinary* in the *Outter-house*, between Ten and Twelve, and in the Interval of *Causes*, the *Clerk* craves that the *Ordinary*, may cause the *Macer* call the *Cause*, in which, these persons are to *Depone*, and accordingly the *Macer* calls the *Party* and their *Procurators*, to the *Barr*, where-upon the *Witnesses*, or *Party* makes *Faith*, and is ordained to wait on in the *Afternoon*, in order to have their *Depositions* taken, before the *Ordinary* to the *Oaths* of *Partys* and *Witnesses*.

Each day at Nine of the Clock, one of the *Lords*, come to the *Outter-house-Bench*, to *Judge* *Causes* that remain undiscussed on the *Saturday*, and which were either in his last *Outter-house* *Roll*, or otherways formerly depending, or newly remitted to him, and this hour in every *Session* Day of the Week, is allow'd the *Lords* in course, one after another, beginning at the *Junior*, and ascending to the *Senior Lord*, except that the hour betwixt Nine and Ten on *Fridays* and *Saturdays* is ap-

appropriated to the last Weeks *Ordinary* in the *Outer-house*.

Every *Session Day* at Ten of the Clock, one of the *Lords* come to the *Side-Barr*, to *Judge Causes* in his *Hand-Roll*, and continues till Eleven, at which he is succeeded by another *Lord*, who continues till Twelve *Judging Causes* in his *Hand Roll*, and to this *Side-Barr* the *Lords* come by turns, beginning at the *Senior* and descending to the *Junior Lord*,

There's one *Lord* appointed weekly to be *Ordinary* on the *Bills*, who continues from *Tuesday* to *Tuesday*, and to this part of Administration, the *Lords* are appointed by Turns, according to their *Seniority*, beginning at the *Eldett*, and descending, and the *Ordinary* to the *Bills*, is *Ordinary* in the *Outer-house* the Week following, his *Office* is to pass all *common Bills*, which are *Warrands* for *Letters* and *Summonds*, which pass the *Signet*, and particularly to pass or refuse *Bills* of *Advocation*, and *Suspension*.

For *Reporting Causes*, in which *Avisandum* is made, to the whole *Lords*, or where the *Opinion* of the *Lords* in *Presence* upon the *Debate*, before any *Ordinary* is to be given, two *Lords* are allow'd to make their *Reports* each *Session Day*, except *Saturday*, beginning at the *Senior Lord*, and descending, and accordingly so soon as the *Lords* are plac'd on the *Bench*, the *Lord Reporter*, that's first in course, takes

takes his place at the end of the *Clerks Table*, and *Reports* the *Causes* he has made *Avijandum* with, in manner fully declar'd in the *Tit. 11* pages 59, 60, 61, 62, of the *Form of Process*, the *Senior Lord Reports* all his *Causes*, before the other begin.

Beside these ordinary Reporters, there's weekly one of the *Lords*, appointed a *priviledged Reporter*, who may Report *Causes* any day of the Week, and this *Priviledge* is given to the *Lords* by Turns, beginning at the first in *Commission*, it belongs to the *Lord* who was *Ordinary* in the *Outter-house* two Weeks preceeding.

There are two *Lords* appointed weekly, for *Examining Witnesses*, and taking the *Depositions* of *Partys*, beginning at the *Senior*, they come to the *Session-House*, each day at Three of the Clock in the *Afternoon*, and continues till Five if there be occasion, they attend each *Session-Day*, on taking *Oaths* for two Weeks together, one of these *Ordinaries* altering every Week.

For *Preparing* and *Examining* the *State of concluded Causes*, contained in a *Roll*, called the *Roll of Causes to be prepared*, there's one of the *Lords* appointed weekly, and for discharging that part of his *Office*, he comes every *Tuesday* and *Thursday* at Three of the Clock, where he is attended by the *Inner-house Clerks*, who have *Causes* to be prepared, and

and in order thereto, they bring with them, the several pieces of the *Procefs*, and a *State* written out, which the *Ordinary* Examines by the several *Depositions* and *Writs* made use of, for proving the *Points* admitted to *Probation*, and thereby prepares the *Cause* in order to be *Inrolled*, in the *Roll of concluded Causes* for the *Inner-house*, and marks the same with his Subscription, which is called a *prepared State of the Procefs*, and that all Parties may know, what *Causes* are to be prepared, there's a *Roll* put upon the *Wall*, containing the Names of the *Parties*, and of their *Advocats*, who are called by a *Macer*, when the *Ordinary* goes about to prepare the *Cause*, and are heard upon what they have to say, against the *State of the Procefs*, form'd by the *Clerk*, and they are allowed to present another, out of both which, as they are verified by the *Procefs*, the *Ordinary* forms sometimes another *State*.

For *Discussing Processes of Count and Reckoning*, and for *auditing the Accounts of Charge and Discharge of Parties*, after an *Act of Count and Reckoning* is pronounc'd in the *Cause*, the *Lords* are appointed *Auditors per vices*, and in making this *Nomination*, the *Order* neither of *Seniority*, or *Juniority*, is observ'd, but that of taking their *Seat and Place* upon the *Bench*.

The Business of the whole Lords in the Inner-house, is first, at their Meeting each day of the Session, except Saturday, to hear the Reports made by the Lords Reporters, to reason upon the Pleadings Reported, and to give their Sentence concerning the same.

When these Reports are ended, the President Reports the Causes, in which, after Pleading in Presence, Informations were delivered, the day preceeding, and the Lords reason thereon, and pronounce their Interlocutor, after all which, the Inner-house Clerks, present to the Lords, the Petitions, and Answers, given unto them, concerning Causes depending either before the whole Lords in the Inner-house, or before any single Lord in the Outer-house, and in reading these Petitions &c. the Clerks observe not the order of Seniority in their Admission, for the Clerk, who sits at that part of the Table, which is on the Presidents Right Hand begins, and when he is done, the Clerk next in the Seat, proceeds and so furth, and the Clerk who begins, is sometimes allow'd to read all his Bills at once, and at other times they are stinted to two Bills, a peice to be read in course, till all the Bills, which they have, be discust, and in this Reading, they first present the Bills, whereto Answers are made, or which were ordered to be answer'd, after which they read new Bills, the desire whereof is either refused or granted

ed, without *Answer*, or they are ordered to be *Seen* and *Answer'd*.

These *Deliverances*, or *Interloquitors* on *Bills*, are signed by the *President*, after Twelve of the *Clock*, at which signing, a *Quorum* of the *Lords* must be present, after which, the *Bill* and *Deliverance*, is given to an *Outter-house Clerk*, to be intimated to all *Parties* concern'd, and to the *Advocats*, or to their *Servants*, and this *Intimation* is made from a *Loaft* in the *Outter-house*, and if the *Petition* be order'd to be *answered*, it is *intimated* two several days, one after another, the first being a *simple Intimation*, the second is called an *Intimation with Certification &c.* That is, if *Answers* be not given to the *Petition*, in order to be *advised*, the day thereafter, the *Lords* will consider the *Bill* by it self, and determine in the *Subject-matter*, as they shall see just, it is to be observ'd, that upon *Saturday*, the *Lords* do not advise *Bills* and *Answers*, so that a *Bill* intimated with *Certification* upon *Friday*, needs not be *answer'd* till *Tuesday* thereafter.

After the whole *Lords* have considered the *Bills*, laid before them by the *Clerks*, the *Causes* peculiar to the *Inner-house* are called, either according to their respective *Rolls*, or according to a special *Deliverance* and *Appointment*, for hearing on that day the *Advocats* plead in a special *Cause*.

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The Causes peculiar to the *Inner-house*, are those contained in a *Roll of Ordinary Actions* for the *Inner-house*, or in the *Roll of concluded Causes*, or in another *Roll* call'd the *Presidents Hand-Roll*, which contains the Causes, in which the *Lords* have appointed a Hearing in Presence, and which are to be call'd according to the Order set down in the *Roll*, and in the Causes either in the *ordinary Action Roll* of the *Inner-house*, or in the *Hand-Roll*, (which of the two the *President* pleases) are call'd any *Session-Day* excepting *Saturday*, which is set a part for *Hearing* and *Advising* Causes, where a *Parties Oath*, or any other *Mean of Probation*, is mark'd clear, after discussing whereof, the *Lords* call the *Roll of concluded Causes*.

In order to have a *clear Probation* summarily advised, the Cause must be put into the *Roll* appointed for Causes which are to be summarily advised, and this *Roll* must be posted, upon the *Session-House Wall*, on the *Friday Night*, that the *Advocats*, being timeously advertis'd, may be duely prepared for *Pleading*.

The *Rolls of Advocations and Suspensions*, and that of *ordinary Actions*, for the *Outer-house and Inner-house*, and also, the *Roll of Causes to be prepared*, with the *Roll of concluded Causes*, are every *Munday morning* affixed on the *Wall of the Session-house*, and a *Coppy* is, without the *Barrs*, and another within the *Barrs*, posted on the same places of the

House

House, where the *Rolls of Ordinaries* are put.

Tho' in the Vacation, or Intervals between the *Sessions*, there is no Judicial Proceeding, yet that the Leiges may not be destitute of all Remedy, and want occasion for passing *common Bills*, for *Letters of Advocations* from *Inferiour Courts*, which fit in the Vacance, and for *Letters of Suspensions* of unjust and *informal Decrees*, the *Lords of Session*, before they rise, *Establiish Ordinaries* on the *Bills*, during that Vacance, and they Recommend to the *Lords*, to attend their Respective Turns in the Vacance, and in this part of their Office; the Act of Parliament 1693 takes not place, for one Lord serves for another, as *Ordinary* on the *Bills*.

These *Bills* are presented, and considered, each *Tuesday* and *Thursday*, in the *Session-house*, betwixt 10 and 12, and any single *Ordinary*, may pass or refuse, all sorts of *Bills* of *Advocation* and *Suspension*, except that in passing *Bills* of *Advocation* of *Processess* before the *Admiralty Court*, & of *Suspension* of their *Decrees*, or of *Decrees* of the *Lords in foro*, that is, where there is *Compearance*, according to the *Regulations* 1672, there must be three *Lords* present in time of *Vacance*, to approve of the *Reasons* of *Suspension*, and in time of *Session*, these *Reasons* must be reported to the whole *Lords* in presence.

In time of *Vacance*, when a *Bill* of *Advocation* or *Suspension* is ordained to be seen and Answer'd,

siver'd, and when *Proceſs* or *Execution* is ſiſted till a certain Day, which falls not within that *Ordinary's Week*, the *Bill* and *Answers* come to be conſidered by the *Ordinary* of the next Week, but in *Seſſion* time, to whatever *Ordinary* a *Bill* is preſented, the ſame with the *Answers*, remain ſtill before him, till the Letters be *expede*, or the *Cauſe* be *diſcuſſ'd*.

That *Justice* may be impartially Adminiſtr'd, all *Solicitations* are forbidden, and ſeveral *Acts* of *Sederunt* have been made for that end, the cheif of which is, That in *November 1677*, and maketh mention, That, 'The Lords taking to their ſerious conſideration, 'that by ſeveral *Acts* of *Sederunt*, they had 'formerly prohibited, all *Solicitations* in *Cauſes* depending before them, whereby *Parties* 'did endeavour, and expect favour, by the 'Credit and *Moyen* of themſelves, or their 'Friends interpoſing with the Lords, and perſonal reſpect, not relating to the *Cauſe*, 'to the great diſcouragement of others, 'who had not the like *Friendſhip*, or *Moyen*, 'and to the great trouble of all, conceiving it 'their *Intereſt*, and that it might be looked on 'as a ſlight or neglect, if they did not upon all 'occasions, by themſelves or their Freinds, 'ſolicite the whole Lords, at their Houſes 'lying ſcatter'd thro' the ſeveral parts of the 'City, imagining thereby to have much promoted their *Intereſt*, and pay'd reſpect to the Lords,

‘ Lords, who have no regard, but are troubled
 ‘ with such Solicitations, it being their Duty,
 ‘ and design to do Justice to all Impartially,
 ‘ without respect of Persons. Notwithstanding
 ‘ of which Acts and Endeavours of the *Lords* a-
 ‘ gainst *Solicitations*, the same have been revived
 ‘ upon pretence of giving *Information* in the *Cause*;
 ‘ But now seeing written *Informations* are be-
 ‘ come ordinary: And that all that ought to be
 ‘ Represented to the *Lords*, in any *Cause*, may ea-
 ‘ sily without trouble be done by written Infor-
 ‘ mations sent to the *Lords*, by an Servant which
 ‘ they will heartily accept, and will not fail to
 ‘ peruse; And finding it unesesable, to hinder
Solicitations, so long as they admit of *Verbal In-*
formations: Therefore the *Lords* did by that
Act Declare, *That they will admit of no Solicitati-*
on, or Verbal Information in any Cause depending,
or that shall depend before them, during the depen-
dance thereof, either by the Parties themselves, or
by any other Person: ‘ And to the end the same
 ‘ may be effectual, against all importunity, the
 ‘ saids *Lords* do Enact and Declare, That it shall
 ‘ be a relevant Reason of Declinator against any
 ‘ of the saids *Lords*, ordinary or extraordinary,
 ‘ that they have received, or hear’d any Solici-
 ‘ tation, or Verbal Information in the *Cause*,
 ‘ during the dependence thereof, but upon the
 ‘ first observing, that the Matter offered to be
 ‘ spoken to them, did bear or import any Soli-
 ‘ citation, or Verbal Information in a *Cause*
 de-

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depending, if they did not use all the Means
 to stop, or withdraw to hear any further ther-
 of, or in case any Solicitation or Informa-
 tion in a Cause depending, be offer'd by
 a Missive Letter, if they do not present the
 same to the Lords. *Likeas the saids Lords do*
strictly prohibite, all Advocats, Clerks, Wri-
 ters and others depending upon the College
 of Justice, or their Servants, to offer to any
 of the Lords, any Solicitation or Informati-
 on by Word, or Letter, but only by writ-
 ten Informations, Bills, or Tickets for calling,
 under the pain of Deprivation, and being
 secluded from the House, excepting the
 Clerk of the Process, for clearing any Inter-
 locutor or Minute in the Cause. *Likeas the*
saids Lords do declare, That if any Party, or
 others of the Leiges, offer any Solicitation
 or Information by Word, or Missive, that
 they will amercciat them as follows, *viz.* E-
 very Nobleman in 300 *Merks Scots* Money,
 every Baron or Knight in 200 *Merks Scots*
 every other Heretor, Gentleman, or chief
 Burgefs, in 100 *Pound*, and every other per-
 son in a 100 *Merks toties quoties*, to be ap-
 plied for the use, of the Poor. *And it's therc-*
by nevertheless declar'd, that the Verbal In-
 formation of any Party or other Person for
 him, when requir'd or allow'd Judicially,
 or before Auditors, in Dyets appointed for
 both Parties to be hear'd, or before the Or-
dinary's

‘ dinary’s upon the Bills, in relation to the
 ‘ passing of Bills of Suspension, or Advocati-
 ‘ on, or before any of the Lords, to whom either
 ‘ by consent of Parties, or by Appointment
 ‘ or Recommendation of the Lords, an accom-
 ‘ modation in any Process is refer’d, is no
 ‘ ways hereby prohibited.

For rendering this Act against *Solicitations*
 effectual, the Lords, by an other Act in *De-*
cember 1679, considering, that some persons
 were so bold, as to venture to *Solicite* them
 in their Actions, and they being resolv’d,
 that so laudable and necessary an Act should
 be made effectual, Therefore, “ They de-
 ‘ clared, when any Process now depending,
 ‘ or which shall hereafter be intended be-
 ‘ fore them, comes to be advised, they
 ‘ will purge themselves concerning re-
 ‘ ceiving any *Solicitation*, or *verbal Informati-*
 ‘ *on* in the Cause, if it shall either be desir’d
 ‘ by the Parties, or mov’d by any of their
 ‘ own Number, and that they will delate the
 ‘ persons who do *Solicite*, or *verbally Inform*
 ‘ them, that they may be punished therefore.

‘ And in *November 1690*, the Lords of *Sessi-*
 ‘ *on*, taking into their Consideration, the great
 ‘ Inconvenience of *Solicitation*, which creates
 ‘ Diffidence in these, who have not Acquaint-
 ‘ ance, or Friends, to recommend them, that they
 ‘ are not equally stated, & puts them to a Ne-
 ‘ cessity, to go to every Lords Lodging, imagin-

ing

ing that if they do not, the *Lord Ordinary* may think that he is either dispised, or distrusted, which is a Slavery upon the *Leiges*, upon the *Lords*, and upon the *Lawyers*, who are frequently urged by their Clients, to go with them, or for them, to *Solicite* the *Lords*: Therefore, to prevent so evil a Custom, which is contrary to several Acts of *Sederunt*, and contrary to the most *Civil Nations* Abroad: The *Lords* did renew and enlarge the Acts of *Sederunt* against *Solicitation*, and because they found the cheif Occasion of *Solicitation*, is, the Pretence that the *Leiges* think they are not secure, that the *Lords* get their *Informations*, unless they deliver them in to their own hands, and thereupon take occasion to *Solicite*; For preventing whereof, and for easing the *Leiges* themselves, and the *Lawyers*, they according to the Example of the most famous *Judicatories* Abroad, have appointed *Boxes*, for every one of the *Lords*, to stand on a *Bank* in the *Session-House*, from Two a Clock in the Afternoon, till Four, each *Box* having a Slit, in which the *Informations*, or *Bills* may be let in, and cannot be drawn out, until the *Box* be opened, the Key whereof, is to be keep'd by every *Judge* himself, and to be committed to no other, and each *Lord*, is to send for his *Box* at Four, that he may have competent time to peruse all the *Informations* therein, and to consider the same,

the

' the *Citations* alledged within these, where-
 ' by none of the *Leiges* can be put to trouble,
 ' to attend any of the *Lords*, for giving their
 ' *Informations*, *Bills*, or *Answers*, Therefore the
 ' *Lords* did declare, " That they will receive
 ' no *Informations*, *Bills*, or *Answers*, any other
 ' way, and that the receiving of the same,
 ' any other way, shall be holden as *Sollicita-*
 ' *tion*, except these *Lords* who are to *Report*,
 ' who may receive the *Informations* of the
 ' Parties, being delivered to the Clerk to the
 ' Process, and by the Clerk with the Process,
 ' to the Reporter; And because Parties do
 ' frequently forbear to give *Informations*,
 ' through Negligence, or of purpose to see
 ' their *Adversaries Informations*, before they
 ' make their own: And likeways, the *Lords*
 ' sometimes are ready to *Report*, when they
 ' have received *Informations*, whereby the rest
 ' of the *Lords* are uncertain, what will be
 ' *Reported* every day, and are necessitated to
 ' read, much more than they needed; There-
 ' fore it is appointed, that every *Reporter*,
 ' shall before Four a Clock in the After-
 ' noon, put a Note in each Box of the Par-
 ' ties, whose *Process* he is to *Report* the next
 ' day.

The *Lords* every *Session*, at their first
 Meeting, are in use, to sign *Writ of Resolu-*
tion, faithfully to observe their own *Acts*,
 made against *Sollicitations*.

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Of the College of Justice.

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The Lords of Session, & the Date of their Admission.

Ordinary Lords.

Sir Hugh Dalrymple of North Berwick Lord President of the College of Justice. } June 7. 1698

Sir Robert Dundass of Arnistoun. }
Sir John Lauder of Fountainhal } Nov. 2. 1689

Baronet.

Sir John Maxwell of Pollock Baronet. Feb. 17 1699

Alexander Lord Polwarth. Nov. 7. 1704

Adam Cockburn of Ormiston. Jan 31 1705

Sir Gilbert Eliot of Minto Baronet. June 28 1705

Sir Alexander Ogilvy of Forglen Baronet. July 23 1706

Mr. James Erskine of Grange, March 18. 1707
made Lord Justice Clerk. July 22. 1710

Mr. John Murray of Bowhil. June 7 1707

Mr. Dowgal Steuart of Blairhal June 7 1709

Sir Francis Grant of Cullen Baronet. June 10 1709

Sir James Mackenzie of Roystoun Baronet. June 7 1710

Mr. David Erskine of Dun. Nov. 8 1710

* - - - - -

Extraordinary Lords.

James D: of Queensberry & Dover. Jan: 23. 1693

William Marquiss of Annandale. June 26. 1696

Hugh Earl of Loudoun. Feb: 7. 1699

Archbald Earl of Isla. June 1. 1708

Three

Three Examples of the Form of the Rolls of Ordinaries in the Session.

I.

Jan: 2. 1711.

Outter-House Lord Arnistoun.

Bills. Lord Fountainhal.

Lords Reporters.

Tuesday Fountainhal and Pollock.

Wednesday Polwarth, and Ormistoun.

Thursday Minto and Forglen.

Friday Lord Justice Clerk, and Bowhil.

Ordinaries from 9 to 10.

Tuesday Arnistoun.

Wednesday Dun.

Thursday Roystoun.

Friday. } Dun. Last Weeks Ordinary in

Saturday. } the Outter-house.

Ordinaries from 10, to 11, to 12.

Tuesday Pollock Polwarth.

Wednesday Ormistoun Minto.

Thursday Forglen Lord Justice Clerk.

Friday Bowhil Blairhal.

Saturday Cullen Roystoun.

On Oaths and Witnesses Cullen and Roystoun.

Priviledg'd Reporter Dun.

On the Concluded Causes Blairhal.

I I.

Jan. 9 1711.

Outter-House, Lord Fountainhal.

Bills. Lord Pollock.

Lords Reporters.

Tuesday Blairhal and Cullen.

Wednesday Roystoun and Dun.

Thursday Arnistoun and Fountainhal.

Friday Pollock and Polwarth.

Ordinaries from 9 to 10.

Tuesday Cullen.

Wednesday Blairhal.

Thursday Bowhil.

Friday } Arnistoun last Weeks Ordinary in
Saturday } the Outter-house.

Ordinaries from 10 to 11, to 12.

Tuesday Dun. Arnistoun.

Wednesday Pollock. Polwarth.

Thursday Ormiston Minto.

Friday Forglen Lord Justice-Clerk

Saturday Bowhil Blairhal.

On Oaths and Witnesses. Roystoun and Dun.

Priviledg'd Reporter. Blairhal.

On the concluded Causes. Cullen.

The present State,

I I I.

Jan. 16 1711.

Outer-House, Lord Pollock.

Bills Lord Polwarth.

Lords Reporters.

Tuesday Ormiston and Minto.

Wednesday Forglen and Lord Justice Clerk.

Thursday Bowhill and Blairhal.

Friday Cullen and Roystoun.

Ordinaries from 9 to 10.

Tuesday Lord Justice Clerk.

Wednesday Forglen.

Thursday Minto.

Friday } Lord Fountainhal last weeks

Saturday } Ordinary &c.

Ordinaries from 10, to 11, to 12.

Tuesday Cullen Roystoun

Wednesday Dun Arniston

Thursday Fountainhal Polwarth

Friday Ormiston Minto

Saturday Forglen Lord Justice Clerk

On Oaths and Witnesses Dun and Ormiston

Priviledg'd Reporter. Forglen

On concluded Causes. Roystoun.

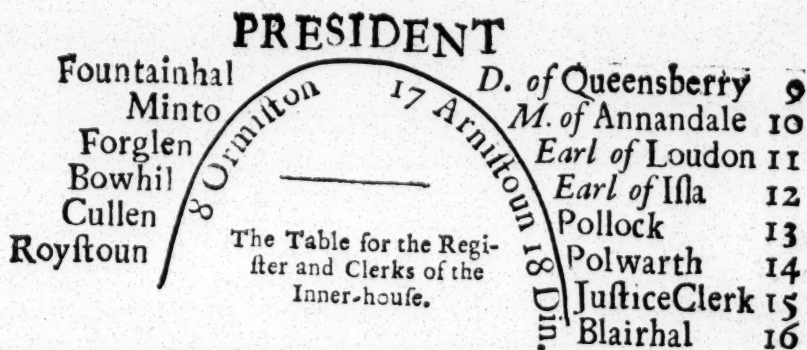
It is to be observed, that the Ordinary in the Outer-house, has no place at the Side-Barr, during the Week he's at the Outer-house-Barr.

Next, that upon the last Eight Days of the Session, there are no Ordinaries in the Outer-house, for judging the Causes in the Rolls of
Suf-

Suspensions &c. And of Ordinary Actions, neither are there any Ordinaries at the Side-Barr; But that the Lords come out in their Turns, beginning at the Senior, to judge, the Causes in their Hand-Roll, for the space of an Hour viz. from 9 to 10, to 11, to 12.

And lastly, That the Lord Justice Clerk, whoever he be, is design'd by his Office, and not by his Estate; And that the Lords of Session take place on the severall Benches, according to the Priority of their Admission, and not according to their Dignity, by Title, Birth, or Office in the State.

The Ordinary Lords of Session, are appointed and Named in their turns to be Auditors in Actions of Compts of Reckoning, not in the order of the other Rolls as above; But in the Order they sit at the Bench, and in which, the Votes are Collected by the President, thus,



The Barr at which the Advocats Plead.

It is to be Observed, that the *Extraordinary Lords* are never in the Outer-House, nor are they put into the Rolls, for they are not bound to attend the Session, but when they please; they come to the Inner-House to Reason and Vote with the Ordinary Lords, without ever having the trouble of Judging alone in any Business whatsoever, as the *Lords Ordinaries* must do.

Moreover the *Lords*, considering how expedient and necessary it is, that they duely and punctually attend every *Sederunt*, in time of Session, and also in their Turns in time of *Vacance*, and for the better Dispatch of Business, that a constant and fixed Rule be established, Did therefore by an Act of *Sederunt*, December 25 1708, Ordain, "The Lords present at their sitting down in the Morning, after the ringing of the *Session Bell* to be marked in the *Sederunt Book*, and if any of their Number be then absent, and come in after their entering upon Business, they shall be marked by themselves, and that if any of the *Ordinary Lords* remove out of the *Session-House*, before the *Ordinary time* at 12 a Clock, that his Removing shall be also marked and he thereupon held as wholly absent; and the saids *Lords*, did Enact and Declare, that such as come in after the *Lords*, are set and entered upon Business, shall lose the Sum of 10 *Shilings Sterling*, and such

as

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as are altogether absent, or so reckoned as
aforesaid, shall lose the Sum of 40 *Shillings*
Sterling for each Sederunt: And likewise,
for the better Dispatch of Business, as said
is, and because in time of *Vacance*, many Bills
of *Suspension*, and all Liberations, did require
the Attendance of Three Lords: *Therefore*,
The saids Lords did ordain, that the Ord-
inary on the Bills for the time, do attend at
least *Tuesday* and *Thursday* weekly, and that
the Ordinary for the Time, and for the sub-
sequent Week, do attend at least each *Thurs-*
day, for dispatching such Bills, as require
Three Lords. *And the said Lords did also*
Ordain, the Clerks to the Bills, to keep an
exact Journal to be delivered unto the Clerks
of the *Session*, and to be Recorded in the
Books of Sederunt, the first Meeting of the
ensueing *Session*: *And the saids Lords did*
Enact and Declare, that the Ordinary upon
the Bills for the Time, who shall be absent,
shall lose 20 *Shillings Sterling* for each Days
Absence, and that each of the other Lords
shall lose 40 *Shillings Sterling* for their Ab-
sence, every *Thursdays* Meeting, and or-
dain the Clerk to keep exact Abbreviats of
the Diets, in which any of the saids Lords
are late, or absent in *Session* or *Vacance* re-
spective, and deliver the same to the Lords
Collectors, at the End and Beginning of eve-
ry *Session*, that the Deductions may be made

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‘ accordingly, and the saids Sums deduced,
 ‘ to accreis to, or be divided amongst the Re-
 ‘ manent Ordinary Lords, and the Collector
 ‘ to be accountable therefore; *And Declar-*
 ‘ *ed*, that they will admit of no Excuse in
 ‘ the Premisses, for whatsomever Cause or Oc-
 ‘ casion, except only when they were called by
 ‘ the Government, or necessarily absent upon
 ‘ the Account of the Death or Sicknes of
 ‘ some near Relation made known to, and
 ‘ allow’d of by the *Lords*, or while they are
 ‘ necessarily detained by their own Indisposi-
 ‘ tion or Sicknes, with this further Excepti-
 ‘ on, That in time of *Vacance*, the Absent Lord
 ‘ may prevail with another to attend, and
 ‘ serve in his Room: *And they Ordain’d*, the
 ‘ Lords of Justiciary, during the Moneth
 ‘ they are in Circuit, to be past over, and the
 ‘ next in course to officiat in their week.

The *Lords of Session*, as *Commissioners* ap-
 pointed by Parliament, to judge *Processes* of *Plan-*
tation of Kirks, Valuation and Sale of Tythes, ob-
 serve this Order.

All *Summons* before this Court, after they are
 Seen and *Return’d* by the *Advocats* for the Parties,
 are *Enroll’d* in a Book of *Enrollment* kept by the
 Clerk of the Court, who every Munday dur-
 ing the *Session*, affixes, upon the Wall of the
 Outter-house and Inner-house, a Roll of the
 Causes, to be call’d that Week, according as
 the same stand in the Book of *Enrollment*,
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without preferring one to another. This Roll contains. 1. *Ordinary Actions*. 2. *Acts to be call'd*. 3. *Causes to be prepared*. And lastly, *The concluded Causes*.

And the *Lords* in a full Body, proceed to discuss *Processes* in the Order, and as they stand in the Roll, without passing over, or anticipating any Cause.

For *Judging Causes*, that belong to their *Commission* they meet, each *Wednesday*, punctually at three in the *Afternoon*, in the *Inner-house* of the *Session*.

About an half hour before the Meeting, the *Clerk of Court*, calls *Summons*, & marks the *Compearance* of the *Procurators* for the Parties, either *Pursuer* or *Defender*, as *Clerks of Session* do.

In presence of the whole *Lords*, the *Acts* in *Processes* are call'd, *Witnesses* make Faith, the Term is *circumduced*, and *Avisandum* made with the *Probation*.

There's no *Ordinary* to *Bills*, for there's no occasion for such, as before the *Session*.

The *Lord* who is *Ordinary* in the *Outer-house* in the *Session*, is for that Week *Ordinary* to *Oaths* and *Witnesses*, before the *Commission* &c.

When *Avisandum* is made with a *Probation*, it is remitted to an *Ordinary* to prepare the same, and the *Lord Ordinary* to the *Bills* in *Session*, is, for that Week, appointed to pre-

pare, and make a *State of the Process* in this Court.

The *Lords* have prohibited *Sollicitations* in *Causes* judged in this Court, and they, as *Commissioners*, did sign the like *Resolve* against *Sollicitations*, as they had done in the *Session*.

The *Informations*, or *Petitions*, relating to *Causes* in this Court, are put into the *Boxes* of the *Lords*, on *Tuesday* Afternoon, being the *Evening* preceeding the *Day*, on which the Court sits.

Pursuant to an *Act* of this *Commission*, the *Clerk*, every *Tuesday* Afternoon, hath a *Box* for receiving *Bills*, *Answers*, and *Informations*, relating to the *Processes*, and he is discharg'd, to present to the *Lords*, any *Bill*, *Answer* or *Information*, which is not so put into his *Box*; However, *Bills* relating to *Acts*, or *Decrets* ready to be extracted, are excepted.

Of the Advocats.

THE *Advocats* compose a Body, called the *Faculty of Advocats*, and they are the only *Procurators* and *Persons*, qualified to *Plead* before the *Lords of Session*, who nevertheless in diverse *Cases* and *Circumstances*, allow the *Parties* themselves to *Speak*, especially, when the *Discourse* is *Information of the Matter of Fact*; But few *Persons* who are not ac-

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accustomed to *Speak in publick*, however, knowing they may be in other *Respects*, can with all the requisite *Assurance* and *Firmness*, *Speak to purpose*, before so *August an Auditory*, and so it rarely falls out, that *Parties* do *Speak*.

None are admitted *Advocats*, but such Gentlemen, as have spent many Years in the *Study of the Laws*, either at *Home*, or *Abroad*, who, when they conceive themselves qualified to *Practise*; They, by *Petition*, *Represent* to the whole *Lords*, that they have *Studied the Laws*, and being desirous to enter *Advocats*, are content to undergo the *accustomed Tryal*. The *Deliverance* on this *Petition*, is, to remit the *Petitioner* to the *Dean of the Faculty*, in order to his *private Tryal*, which being brought to the *Dean*, he again remits the *Party* to the *Private Examinators*, who appoint a *Dyet* to the *Petitioner*, & *Examine* him, either in the *Scots Law*, or in the *Civil Law*, according to the *Tenor* of his *Petition*; For it is to be observed, that one is admitted *Advocat*, upon his *Understanding* the *Roman Law* alone, without being *Examined*, either in *Common* or *Fewdal-Law*, or even in the *Municipal-Law* of the *Kingdom*, and he may also be *admitted*, upon his being found *Qualified*, after a *Tryal* of his *Knowledge* in the *Municipal-Laws* of *Scotland*, without being *Examined* in the *Civil*, or any other kind of *Law*.

For trying of *Intrants*, there are *Nine Advocats* appointed *Private Examinators* in the
Civil

Civil Law, among whom the 50 Books of the *Digests* are divided, and each of the *Examinators* propound *Questions* Relative to the *Titles* in his part, and raise *Objections* in the ordinar way of *Disputation*.

If the *Intrant* crave to be *Examined* on the *Scots Law*, Two *Advocats*, of the most *Experienced* and *Learned* in that *Law*, are appointed to concur with the other *Private Examinators* in this *Tryal*.

The *Intrant* being found by the *Private Examinators* sufficiently qualified, They recommend him to the *Dean* to Assign to him a *Title* for his *Publick Tryal*, which the *Dean* accordingly does, and if he is *Examined* in the *Civil Law*, he's ordained to compose in a competent short time, *Theses* upon the *Title* Assigned, which he *Defends* publickly, and being, after that *Trial*, found qualified; The whole *Faculty* recommend the *Intrant* to the *Dean*, to assign a *Law* in the *Title*, which was the Subject of his *Theses*, for his *Lesson* before the *Lords*.

On this *Law* or any *Paragraph* thereof, the *Intrant* Forms a *Learned Discourse* which, on a Day appointed for the purpose, he rehearses before the whole *Lords* at their down-sitting in the Morning: After which, the *Lords* receive him to be an *Advocat*, Administer to him the *Oath de fidei Administratione*, & the other *Oaths* appointed by the *State*, as *Oath of Alledgance*, &c.

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&c. And this *Interloquitor* of Admission is written on the back of his *Bill*, after the several others that relate to his *Private* and *Publick Tryals*, and upon all an *Act of Admission* is *Extracted*.

These who are admitted *Advocats* upon an *Examination* in the *Scots Law* pass in the same manner as the *Civilians* do, except, that they rehearse not before the *Lords* a publick harangue, upon a *Title* of the *Law* as the others do.

The *Admission* by a *Trial* on the *Civil Law* is looked on to be the most *Honourable*, and makes the *Intrant* to be more respected, than these who pass upon *Scots Law*.

Every *Intrant* upon *Examination* in the *Roman Law* payes 500 *Merks* for the use of the *Faculty*, and 45 *Merks* for the use of their *Poor*, and these who are admitted upon *Trial* in the *Municipal Law* pay 1000 *Merks*, and 90 *Merks* for the *Poor*.

This Money is payed to the *Thesaurer* of the *Faculty* before they can be admitted to their *Private Trial*; For the *Thesaurers* Discharge must be shown to the *Private Examinators*, it is rather *Consigned* than given to the *Faculty*: For if the *Intrant* be not *Admitted*, either through *Decease* or changing of *Resolutions*, or the like, then the Money is restored, albeit the Party hath past both *Private* and *Publick Trial*; But if he be once *Admitted*, though he should

should dye the next Day, it is duely acquired to the *Publick Use* of the *Faculty*.

The Benefit got by this *Admission*, is, that the *Party* may not only *Plead* all *Causes* whatsoever that come before the *Lords of Session*, either in the *Inner-house* or *Outer-house*, but is *ipso jure* qualified, without any further *Trial* to *Plead* before all the *Courts* of the *Kingdom* either *Civil* or *Criminal*, *Superior* or *Inferior*, which is a *Priviledge* allowed to no others; For none but these *Advocats*, are allowed to *Plead* before the *Parliament*, and *Committees* thereof, The *Lords of Privy Council*, *Exchequer*, and *Justice Court*, and, if they please, may *Plead* before the *Commissars*, *Sheriffs* or other *Inferior Courts*, which none others are allowed to do, except they have served a competent time in these *Courts*, and be found, by these *Inferiour Judges*, sufficiently *Qualified*.

The *Advocats* are subject to the *Authority* of the *Lords of Session*, who from time to time prescribe *Rules* for their *Conduct*, and make *Acts* directing them in their *Duty*, for *Non-Observance* of which, or for *Malversing* in their *Office*, are *Censur'd*, *Fin'd*, or *Debar'd*, and put from their *Employment*. The last *Act* of *Sederunt* made to this end is in *December 1710*, Reviving another *Act* *Feb. 6 1692*, which is mention'd in the *Form of Process* p.60. And further Ordaining, 'That all *Petitions*, *Answers*, and ' *Informations*, given in to the *Boxes*, whether in *Print*, or *Write*, have the *Advocats*

' *Names*

Names subjoined thereto, who shall be look'd upon as the Drawer thereof, and answerable for what they may contain. *And likewise lyable to the Censure, in the 23 Article of the Regulations 1695, whereby it is ordered: ' That for remeeding the abuse of the multiplying of Bills, and of their superfluous length: The Lords, shall upon occasion, as they find any Bill to be groundless, or, in its length, superfluous and Litigious, Fine the Advocat, Subscriber, and Party in such a Pecuniary Mulct to be instantly payed, as they shall judge reasonable. And by the said Act in December 1710, The Lords have Ordained, ' That all Reclaiming Bills, have the date when given in, and bear the date of the Interloquitor Reclaim'd against, whether of the Inner, or Outer-house: As also, They have Discharged all Printers, to Print any Petition, Answer, or Information, without a sign'd Warrant from an Advocat, whose Name they shall Print at the bottom thereof. And it is by that Act Declared, " That the Lords will pronounce no Interloquitor, nor Deliverance, upon any Information, Petition, or Answer given in, otherwise, than is above Ordained.*

The *Advocats* wear in the *Session-house* a *Black Gown*, and attend in a large square *Area* opposite to the *Bench* of the *Outer-house*, which is called the *Barr*, fenced by Rails, the

Door

Door whereof is kept by a *Servant* in a *Black Gown*, carrying in his hand a *Batton*, tip'd with *Silver*, who is to let none into the *Barr*, except *Advocats*, *Writers to the Signet*, and others whose necessary occasions call them there, nor can these, warrantably be admitted, without order of the *Dean of Faculty*, or of those appointed to direct the *Barr-Keeper* : An *Advocat* may have as many *Servants* as he pleases, though only one, has the *Priviledge* of a *Member of the College of Justice*, That these *Servants* may be at hand, when their *Masters* Call there are *Desks* and *Lofts* made for them to stand in, where they hear what *Causes* are called by the *Macers*, in order to call on their *Masters*, and to take notice what is done in the *Cause*,

The *Fees* given to *Advocats*, are various, sometimes more, sometimes less, and this difference, is not founded on the *Intricacy*, or *easiness*, or other *quality of the Cause*, but is derived from the *Quality of the Person*, the last *Regulation* of their *Fees* is, in the year 1695 Thus.

For the *Consultation*, *Pleading* thereon, and *drawing Bills*, upon any *Interloquitor* in that *Pleading*, there be given at most

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A Nobleman 9 Rix Dollars or 2 Guineas.

A Baron or Knight 7 Rix Dollars, or 1 $\frac{1}{2}$ Guinea.

Any other Gentleman or chief Burges 4 Rix Dollars or 1 Guinea.

All the rest of the Leiges 3 Rix Dollars.

A Rix Dollar was then 4 *sh.* 10 *d.* Sterling.

There shall not be above Three Advocats called to the Consulting, and Drawing the Information after Dispute to the Lords, and to the Advocat who draws the same, may be given a full Fee, and to the other two, one half thereof. But no Regulation hitherto being made in this matter, it has continued in long Observance.

Besides these Payments, many Advocats are retain'd by their Clients, and get a Yearly Pension, tho' the Client have no Law Business; And, this is given to ensure the Advocat to be on all occasions for the Party, and in Consideration of a Prudent Advice and Counsel, given in managing the Clients Ordinary Affairs.

Generally speaking, every Advocat has two Servants, one who takes care of his Clients Affairs, and another who waits on his Person; The ordinary Fee of the First, is, a Crown, and the other gets an Half-Crown.

The Body of the chief of Advocats Servants, was in former Times a Nursery for Advocats, who then were first Servants, before they

they came to be *Masters*, and they learned the Practice by managing *Procesſes*, under their own *Masters*, whereby they got *Experience*, which enabled them to give ſolid *Counſel* in *Law*, when they came to be *Advocats*; and by the *Regulations* 1672, ſuch perſons as take on them the Name of *Agents*, being neither *Advocats* nor *Servants* to *Advocats*, are to be *debarred the Houſe*, and not to be permitted to *Negotiat* or *Manage Procesſes*; and by an Act of *Sederunt*, *February* 26 1678, “ The
 ‘ *Clerks of Seſſion*, and their *Servants*, are di-
 ‘ charged to give up, or lend out *Proceſſes*, or
 ‘ *Writs*, except to *Advocats*, and their known
 ‘ *Servants*.

The whole *Advocats* have *Liberty*, and *Power* to aſſemble in a *Body* and *Meeting*, and are in *Immemorial*, *Uninterrupted Poſſeſſion* of this *Privilege*, and at thoſe *Meetings*, they not only *Examine Intrants*, and give the *Votes* in a moſt *Impartial Way* of *Balotation*; But alſo, conſider of *Abuſes* committed by any of their *Number*, or other *Members of the College of Juſtice*, in managing of *Proceſſes*, and censure their own *Members*: And as to others, they *Repreſent* to the *Lords*, their *Grievances*, and crave they may *Redreſs* the ſame; They fine *Absents* from the *Meetings*, in a ſmall *Pecuniary Mulct*, and can debar them till they pay, they have full *Adminiſtration of the Money* payed by the *Intrants*, which is ordinarily

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employed, in supplying the Necessities of the Poor, and in buying Books for the *Library*, which is already the best in *North-Britain*, & in Process of time, may come to be the best in the *Isle*, both by reason of the *Number*, & *Goodness of the Books*, for the *Advocats* bestow yearly very liberally that way, and their *Stock* is very considerable, and is dayly increasing.

The *Faculty* has several *Office-Bearers*, as their *Dean*, *Thesaurer*, *Clerk*, *Curators of their Library*, *Library-Keeper*, and *Private and Publick Examinators*, all *Advocats* and *Members of the Faculty*; They have two *Servants*, who get considerable *Fees*, as their *Under Library-Keeper*, and the *Barr-Keeper*.

The *Dean*, *Thesaurer*, and *Clerk*, are yearly chosen, or continued in their *Office*, and Nine New *Private Examinators*, and Fifteen New *Publick Examinators*, are yearly *Elected*; These *Elections* are made, each *Anniversary Meeting*, which holds, the first *Tuesday of January*: There are Three *Curators*, each of which is changed in *Three Years*, to make way to others; So that every *Anniversary Meeting*, a New *Curator* is chosen, which is designed, That, seing Men are of different *Geniuses*, and applying themselves to diverse *Sorts of Studies*, the *Library* may be furnished with the *Best Books* in all *Sciences*, which have a *Tendence towards Knowledge of the Law*;

Law; The *Advocats* satisfy themselves with few *Books of Divinity*, the Old Greek and *Latine Fathers* of the Church excepted, & *Church History*; But all Sorts of *Canon Law Books* are taken in, nor are they fond of the late *Books of Medicine*, or *Philosophy*, except such as are *Ethical*, and are *Illustrations of the Laws of Right Reason*, and of *Nature*, which some of the *Modern Philosophers*, have done to very good purpose. These *Offices* are *Gratuitous* without any *Salary*, except the *Library-Keeper* and their *Servants*, who have a yearly *Pension*, and so has the *Barr-Keeper*, not only out of the *Advocats Stock*, but out of that belonging to the *Writers to the Signet*, and being once chosen, they are continued in Office, *quamdiu se bene gesserint*.

Of the Lord Clerk of Register.

THE *Clerk of Register* is appointed by the Queen, in a Commission under the *Great Seal of Scotland*, he is called *Clerk of Her Majestie's Councils*, *Exchequer*, *Register*, and *Rolls &c.* And is One of the *Eight Officers of State* in Scotland, he is the *Superiour Clerk* over all, and was *Clerk to the Parliament*, and *Convention of Estates of Scotland*, before the *Union*, He has the keeping of all the *Records*, (both publick and private) of

Scot-

Scotland, and appoints *Deputy Clerks* to several Courts of North-Britain, he nominates the *Principal Clerks of Session*, the *Principal Clerks to Bills*, the *Keeper of the General Register of Seafins, Reversions, and Renunciations*, and of the *General Register of Hornings, Inhibitions &c*, both which are kept at Edinburgh: And also, of the particular *Register of Seafins &c. Hornings and Inhibitions*, kept in every particular *Shire* of Scotland, he gives to all the *Keepers*, signed Books of Record, to write their several *Writs Registred*, he has a *Deput* who is called *Clerk* to the *Notars*, who delivers, to such as are admitted *Notars*, a *Protocal Book*, in which they're bound to insert *Instruments* taken by them as *Notars*, but especially *Instruments of Seafin, and Resignation*, and when these *Books of Records*, or *Protocols* are written out, he delivers new Ones, he from time to time calls in all the *Records*, and puts them in the *Castle of Edinburgh*, or in a Room below the *Session-House*, which are the *Repositories* of all the *Records of Scotland*, of which an *Inventary* was in the Year 1676, made by the special Order of King Charles 2d. and conform thereto, the *Registers* were delivered by Sir *Archbald Primerose of Caringtoun* then *Clerk Register*, to Sir *Thomas Murray of Glendoick*, at his succeeding him in this Office; conform to which, the *Additions* that are made from Time.

time to time the *Records of Scotland* are delivered to each *Clerk Register*, at his entering in this Office.

Of the Clerks of Session &c

THERE are six *Principal Clerks* of the *Session*, otherways called *Inner-house Clerks*, because their Attendance, is only in the *Inner-house*, they keep three *Offices*, in each of which, are two *Principal*, and two *Under-Clerks*, who have their several *Appartments*: In these *Offices*, *Acts* and *Decrees*, are written by the *Extracters* and their *Servants*, and the *Warrants* belonging to *Processes*, are kept till these *Decrees* be *Booked*, and thereafter, by one of the *Clerks Servants* appointed for that purpose.

The *Principal Clerks* of *Session*, have their *Commission* from the *Clerk Register*, with a power to Appoint *Under Clerks*, or *Clerks* for the *Outer-house*, and *Extracters* in their several *Offices*.

By the 10 *Article of the Regulations 1695*, The *Lords of Session* are ordered, to observe the following Rule in admitting *Clerks* of the *Session*, That no person be admitted *Clerk* in the *Inner-house*, unless he be an *Advocat* or *Writer* to the *Signet*, and has serv'd as such, three Years before, That they take str^{ct} Try-

all of the Ability, and Integrity of all the Clerks they admit, for performing their Respective Offices, and that every Clerk in the Inner-house, shall, at his Admission, make Faith and purge himself, by his Solemn Oath, that he hath not given, nor promised, directly nor indirectly, for procuring and obtaining their said Office and Place, more than 1000 lib. Scots, or a Years Salary.

The Lords, by an Act of Sederunt in 1697, ordered the Tryal of the Ability of the Clerks to be presented to the Inner-house to be thus, That the Clerk Probationer, sit at the Clerks Table, when a Cause shall be called in the Inner-house, and make a short Minut or Note, as he thinks convenient for his Memory, and when the Debate is closed, that he withdraw, to another Table of the same Room, and with the Help of the Process, extend the Minuts of Debate, with the Lords Interloquitor thereon, if any be pronounced, and thereafter, that he return, and read the Minuts and Interloquitor in presence of the same Sederunt; And further, that he Report the Heads of a Bill and Answers, to be assigned him by the Lords, and this over and above, an Examination to be made verbally, in presence of the Lords, as to the Forms of Acts, Decrees, and the like, concerning the Exercise of his Office.

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The Work and Duty of the *Principal Clerks*, is, to read all *Petitions*, which are presented to the whole *Lords* met together in the *Inner-house*, and to write the *Deliverance* and *Interloquitor* thereon, which they're to procure to be duely signed by the *President*: To minute and note the *Pleadings* of *Advocats* in the *Inner-house*, and to write *Interloquitors* of the *Lords*, and upon *Reports* of *Ordinaries*, to Form the Answer of the whole *Bench*, and to take care that the *President* sign it: To prepare all *Causes* that come to be concluded and advised in the *Inner-house*, or, are debated there; And in order to the Clerks right discharging his *Office* in this Behalf, he ought to peruse, and perfectly understand the whole *Process*. For which Cause, and that the Clerk may have sufficient time to consider *Petitions*, *Answers*, and *Informations*, with the *Process* to which they relate: The *Lords* by an *Act of Sederunt*, ordained each of the *Inner-house Clerks*, to have a *Box* set out at the same *Dyets*, and in the same place, appointed for the *Boxes* of the *Lords* of *Session*, and they ordained all *Parties* concerned in *Processes*, to put their *Bills*, or *Answers*, in the *Box* of the Clerk, who is to read the same, and *Informations* of *Causes* to be Reported at the same time, that these *Bills*, *Answers*, or *Informations*, are put in the *Boxes* of the *Lords*, and the Clerks are discharg'd, to

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move to the *Lords*, any *Bill*, or *Answer*, that has not been put in his *Box*, except *Bills* which pass of Course, or where *Bills* relate to *Acts*, or *Decrets* ready to be extracted, and when there is no time to make Copies for the *Lords*, in which case, the *Clerks* are allowed to move the said *Bills*, in the next *Sederunt* only, and not after.

The Under *Clerks*, are Nominated by the two Principal *Clerks* of the Respective *Chamber*, where the *Vacancie* is, and are generally taken from the most Ancient and Experienced *Extracters* of the *Office*, or Persons otherwise of great Experience, and well known in the *Forms* of the *Session-House*, and *Office* of the *Clerks*. They are presented to the whole *Lords*, and by them *Approven*, their Duty is to minute all *Debates* before the *Ordinaries* in the *Outter-House*, to write *Interloquitors*, to see all *Acts* and *Decrets* pronounced, duely put in the *Minut-Book*, to write the *Deposition* of *Parties*, and of *Witnesses*, and each *Session-Day* at Twelve a Clock, to Intimate in the *Outter-House*, the *Deliverances in presentia*, upon *Bills* presented and read in the *Inner-House*, and to make the other usual and necessary *Intimations*; and to do what in themselves, that *Justice* be impartially and speedily administered to all.

The *Lords* taking notice, of the dangerous Consequence of the *Clerks* *Servants* &

Extracters, being *Agents* in *Processes*, because they have under their Masters, the *Trust* and *Custody* of *Processes*, and of the *Writs* produc'd in them, and are imployed in extracting *Acts*, and *Decrets*; Therefore, the *Lords*, by an *Act* of *Sederunt* in 1682, require the *Clerks* of *Session*, to cause all their *Servants* in their *Respective Offices*, give *Bond*, that during their *Service*, they shall not *Agent* for any of the *Parties*, under the *Pain* of 100 *lib. Scots*, and it is recomended to the *Lord Register*, to see this *Act* put to punctual *Execution*.

By the 4th *Article* of the *Regulations* 1695; It is ordered, that the *Clerks* both of the *Inner* and *Outer-House*, be put under *Pay*, by yearly *Salaries* or *Fees*, and most straitly discharged of all other *Takings* whatsoever, under the *Pain* of *Deprivation*, and of the *Sum* of one *Years Salary* beside, and that the *Cognition* and *Tryal* of their *Observance*, be by the *Lords* of *Session*, at the *Instance* of any who shall complain. And further, that in case any *Party* in any *Process*, shall think fit to complain of the *Clerk*, for undue taking, the *Lords* shall receive the *Complaint* summarly, and call both the *Clerk*, and *Party* or *Person* alledged to have given; and first make the said *Party* or *Person* declare in *Writing* under his *Hand*, whether he hath given or not, and

what

what he hath given, and then make Tryal of the matter, by the *Oath* of the *Clerk* complained upon, or by any other Method the *Lords* shall think just.

The *Clerks* at their *Admission*, and at the beginning of the *Session*, are to give their *Oaths*, according to the *Formula* set down in the 5th *Article* of the saids *Regulations*, that they shall observe this *Regulation*.

‘ The *Salary* of the *Principal Clerks*, is 4000 *Merks Scots* yearly, to each of them, and to every one of the *Under Clerks*, 2000 *Merks*, to be payed out of the *Dues*, of their whole *Offices*, and if it happened, that the Money collected, was more than satisfied these *Salaries*, the *Excescence* was to be apply’d to certain *Uses* mentioned in the 6th *Article* of these *Regulations*: But by, an after Order from King *William*, in the Year 1696, It is divided proportionally among the *Clerks* of the *Inner-House* and of the *Outter-House*.

The *Fees* and *Dues* of the *Offices* of *Session*, and the *Prices* of *Judicial Writs*, have been regulated by an *Act* of *Parliament* in 1621, and by another *Act* in 1672, and by the *Regulations* 1695, and 1696, and are at present as follows.

*The Fees and Perquisites, of the Lord
Clerk Register.*

For the Extracts taken out of the Re- cords immediatly un- der the Clerk Registers keeping, in the Rooms below the Parliament House, of any Write Registered.	Before 1660. Since	Sterling lib: sh: p: 00 15 00 00 10 00
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For a *Petition* to be presented in
Parliament. : : 01 02 2

For the Extract of <i>Acts</i> First	Extract	05 11 01
or <i>Decrets</i> of <i>Parlia-</i>	Second	
<i>ment</i> , in favours of pri-	Extract	01 02 02
ate persons.		

For the Register, his signing
Writs recorded in the *Session*
Books, or extracted out of them,
such as *Acts*, *Decrets*, *Regi-*
stration of privat *Writs.* . . . 00 01 01

Besides, the *Dues* and *Fees* pay-
able as above to the *Clerk Register*,
nothing under the name of *Drink-*
Money, or upon any other pre-
tence, is to be payed to any other
person whatsoever. . . .

For

Of the College of Justice.

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For searching the Registers immediately under the Clerk of Register, his keeping in these Sterling. Rooms below the Parliament lib. sb. d. House, to the Registers Servant. 00 04 10

The Records in these Rooms, or any where else kept by the Lord Clerk Register his Servants, are by Act 12. Regulations 1695, ordain'd to be patent to all the Leiges, without any Payment or other Acknowledgment of that sort, to be made to any, for Sight of the Minute Book.

If the Clerk Register or his Servants Transgress in the Premises, the Register is to be Try'd and Censured by the Lords of Session, and his Servants are to be in like manner Try-ed by them, and to be Censurable by Fyning, Imprisonment or otherways as the Lords shall see Cause.

The Dues and Fees of the Clerks of Session.

For Registring Obligations and other Private Writings, in which the Merk Payable to the Register is included for the first Sheet. 00 02 9 $\frac{1}{2}$

For every one of the following Sheets. : : : : 00 01 8

For Tabulating a Summonds before Calling thereof. : : 00 02 9 $\frac{1}{2}$

For

		Sterling,		
		lib:	sh:	d:
For Reading in the <i>Inner-House</i> a				
<i>Petition</i> or <i>Answer</i> , for each	:	00	04	10
For Calling an Act in presence of				
an Ordinary	:	00	02	06
For the Oath of	In the Session	00	02	2
a Party taken	Upon Commission	00	01	1
For the Deposi-	In the Session	00	01	1
tion of a Wit-				
ness taken	Upon Commission	00	00	6
For Sheets Repeated out of Acts or				
Decrets formerly Extracted		00	00	08
For <i>Petitions</i> and <i>Answers</i> , inserted				
in Acts or Decrets, which are				
not reckon'd by the Number of				
Sheets, but by the Peice, and				
for each of them	:	00	01	02
For each	<i>Acts</i> { Not Reckon'd among	00	05	00
Sheet in	<i>Decrets</i> { Repeated Sheets, or a- mong <i>Petitions</i> and <i>An-</i> <i>swers</i> .			
	<i>Protestations</i>	00	05	00
	<i>Diligences</i> :	00	05	00
For every Diligence granted by the				
Lords without an Act	:	00	04	10
For the first Sheet	<i>Transumpt</i> s :	00	05	00
in Decrets of	<i>Transferring</i> :	00	05	00
	<i>Registration</i> by			
	way of <i>Action</i>	00	05	00
For the first sheet in <i>Commissions</i>				
where ther's no Dispute	.	00	05	00
For the 2d and every one of the				
Sheets in the above Decrets and				
<i>Commissions</i>	.	00	01	08

For

Of the Colledge of Justice.

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Sterling.

lib. sh. d.

For Advising Summarly a Negative Oath. : : : : : 00 04 10

When a Bill is given in for Advising this Oath no more is to be payed for both Bill & Advising :

In Compt and Reckonings, such allowance is to be payed by both Pursuer, and Defender, as the Lord Ordinary shall modify for every Meeting *toties quoties*, not exceeding from each Party.

00 04 10

For attendance upon Commissions, there's to be payed by either Party, such a Sum as the Lords of the Commission shall Modifie.

In Competition of Rights and in Rankings for every Interest to be payed by the Producer.

00 04 10

In Reductions and Improbations, wherein Productions shall be made for the whole Production, tho at different times, to be pay'd by the Producer

00 04 10

For preparing of Concluded Causes to be Reported and Advis'd by the Lords, there is to be pay'd by both Parties such allowance as the Lord Preparer of the Report shall modifie, not exceeding.

00 09 08

If

For

If one of the *Parties* be absent he is not to be heard either at *Preparing* or *Advising* till he repay his half to the *Party* who made the *Advance*. Sterling. lib. sh.

At the first Inrolling of *Causes* in the *Inner-house*, or calling of *Causes* there, by the *Lords War-rant*, for the *Clerks* Minuting the said *Cause* during the *Dependence*, there's to be pay'd by each 00 04

The Dues and Fees of Extracters.

For each Sheet in *Acts* or *Decrets*. : : : 00 01

And it is appointed by the *Regulations* 1672, That in regard divers *Processes* after *Dispute*, and *Interloquitor* pronounced therein either *in prasentia*, or in the *Outer-house* settled by the *Parties*; so that the *Process* came not the length of a *Decreet*, or if *Decreet* be pronounc'd, it is not *Extracted*, and it being just and reasonable, that the *Clerks* should have allowance for the Pains taken by them in the *Processes*: Therefore in these *Cases* they're allowed to take Satisfaction, as if *Decrets* were *Extracted*, according to the sheet of the *Acts* of *Litiscontestation*, or other *Acts* in the *Process*, (and if there be no *Act*) according to the Sheets of the *Summonds*, *Suspension* *Advocation*, and if the *Cause* was *Disputed*

Of the Colledge of Justice.

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ng. the Inner-house according to the sheets the Mi-
ut of *Processses* wou'd amount to, if the same
were extended into an *Act* or *Decreet*.

By the 8th Article of the *Regulations* 1695.
It is ordered, That nothing be pay'd by way of
Drink-money, or otherways; either to the
Clerks, whether *Principal* or *Under-Clerks*, or to
their *Servants*, or *Dependers*; either for calling
Summonds, or *Acts*, or for *Copies* of *Suspensions*,
Interloquitors, or *Minuts*, or giving in or get-
ting out, of *Papers*, or getting up, or giving
back, of *Processses*, or for any other Cause except
what is above allow'd.

The *Dues* and *Fees* of the *Clerks* of *Session*,
and of the *Extracters*, are to be pay'd to a Col-
lector, who pursuant to the 9th Article of the
same *Regulations*, is *Nominated* and *Chosen* by
the *Lords* of *Session*, for *Collecting* and *Inga-*
thering all these *Dues*, and *Payments*, and is
to have a *Sallary* of 100 *lib. sterl.* payable out
of the same *Fund*, with the *Clerks*; This Col-
lector is, at his *Admission*, and in the beginning
of every *Session*, *Ordain'd* to take the same
Oath, that is prescriv'd to the *Clerks*, *mutatis*
Casibus, and to find sufficient *Caution* for the
Discharge of his *Office*, and is to mark and sign,
the *Payments* made, as is above appointed,
upon every *Act*, *Decreet* or other *Write*, that
is to pass his hands, and that the *Clerks* may
have a sufficient check upon the *Collector*, he,
the said *Collector*, is to Sign their *Minute-Books*;

once every Week, at such time as they agree.

The *General Collector*, with consent of the *Clerks*, has in every one of their three Offices, a Depute to gather the *Dues*, of *Decrets*, *Acts*, *Diligences*, *Productions*, *Callings*, *Modifications*, &c. while he himself receives only the *Dues* for *Petition* and *Answers*.

These *Depute Collectors* ingather also, the *Dues* payable to the *Extracters*, which is to be given quarterly, to each *Extractor*, as he shall instruct his share and Interest in the same, by their *Minute-Books*, or other sufficient *Documents*.

The *Clerks*, and *Extracters* (who are their *Servants*), are not in use to meet in a *Body*, nor are they united in any *Society*, as the *Advocats* and *Writers* are, nor have they a publick *Stock*, for the use of their *Poor*; However, when any *Competition* arises, concerning a *Process*, (for every *Chamber* and *Office* strives to have as many as they can get) The *Clerks* meet together, and these in the third *Chamber*, are to the other two *Clerks* competing, chosen *Judges* who upon hearing the *Claim* of both *Parties*, determine to which of the two, the *Process* in *Contraversty* belongs, and if the difference be not thus ended, the *Competition* is determined by the *Lords* in a private *Consideration*.

It is to be noticed, That if a *Process* be once fix'd in a *Chamber*, it is not in the Power of the *Client* who tabled it there, to remove it to

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another, for there it must continue till the Conclusion thereof: The same is likewise observed, as to the *Under-Clerk* and *Extracter*, for none of them can be chang'd, so that the *Client* must make a discret choise at first, it is otherways in respect to an *Advocat*, or *Writer* whom the *Client* may change when he will, but as to *Writers*, it is by the *Society* appointed, that none shall accept of anothers *Client*, till he has pay'd the Accompts due to the first *Writer*.

Of the Keepers of the Rolls for the Outter-House.

By the *Regulations* in the year 1672. It is appointed, that *Books of Enrolment* for the Outter-house, shou'd be made, for Enrolling *Processes*, according to the Dates of their *Returns*, that thereby notice, may be timeously given to all concern'd, how far the *Lords* are advanc'd in determining, and discussing *Causes*, according to these *Rolls*, that the *Parties* may be present, when their *Process* fall in to be determined.

These *Books of Enrolment* are kept by one appointed by the *Lords of Session*, the Duty of the *Keeper* is, to attend at the *Session-house*. each *Saturday* in *Session-time*, from two in the *Afternoon* till four, and to take a Note of all

Pro-

Processes shown to him, containing the Names of the *Pursuers* and *Defenders*; The Name of the *Cause*, if it have a special Name, as *Advocation*, *Suspension*, &c. or otherways the general Name of *Lybelled Summonds*: By this Note, he is, according to the date of the *Return*, to insert all produced that Day. In one Book *Advocations*, *Suspensions*, *Removings*, *Ejections*, *Recent Spoilzies*, and in another Book, *Summonds*, *Summonds of Adjudication*, *Summonds of Reduction*, *Summonds of Reduction and Improbation* and all other *Causes*: Expressing in these *Books* the Day of the Moneth of the uptaking of these *Causes*.

He must not interline, or insert in the *Book*, any *Cause*, but set them down in order, as they are presented, according to the Date of the *Returns*.

By an *Act of Sederunt* in December 1709. The *Lords Appoint*, That in time coming, the 'Keepers of the said *Books of Enrolment*, do 'prefix the Arithmetical Numbers of 1, 2, 3, ' &c. to each *Cause*, as they stand insert in the 'said *Books of Inrolment*, and that the Keeper, 'at the first coming out of each Weeks Ordinary, upon *Tuesday Morning*, present, and lay 'before him, the *Books of Enrolment*, with a 'Doquet thereupon subjoin'd, clos'd to the last 'Cause taken up, upon the *Saturday* immediately preceeding, in these words: *The total number of the Actions and Causes, enroll'd upon Saturday last (being such a day of the Month) extend*

tend to, such a number, (expressed in words and not in Arithmetical Figures) Which Doquet, the Lord Ordinary is to sign under his hand, this the Keepers is to do, under the pain of 30 lib. Scots, toties quoties: And it is by that Act, recommended to the Weekly Ordinary for the Outter-house; That upon every Wednesday Morning, he Report to the whole Lords, whether the said Books of Enrolment, had been presented, and subscribed upon the Tuesday preceeding in manner foresaid.

The Regulations 1672, Appoint, the said Keeper of the Outter-house Rolls, to take out of these Books, & each Munday to affix upon the Wall of the Outter-house, two Rolls, one containing Suspensions, &c. and the other Roll containing the Causes insert in the other Book of Enrolment for Summons, and each subsequent Roll shall in the first place contain, what remain'd undiscust, by Act, Decreet, or Protestation.

Processes delay'd to a Day, till the Parties see, or something be produced, or the like, requiring no Act, may remain in all subsequent Rolls, in the same Day it was in the first Roll, and the Ordinary shall in the Margent of the Roll, Mark, to what Day it is delay'd, which in the subsequent Rolls, is to remain so Marked, till the Cause be Discust.

His

His Fees and Dues.

For Enrolling every *Process* Sterling.
and for affixing *Rolls* upon the *lib. sh. d.*
Wall. : : : : : : : : : : 00 00 04

The *Books of Enrolment*, are to be Patent to the *Lieges*, and the *Keeper* is, to exact nothing for shewing thereof.

The *Keeper* is, to observe exactly these *Rules* and shall give his *Oath* for that effect, and if he transgress, the *Lords* shall deprive, and otherwise punish him, as they see cause.

Of the Keeper of the Rolls for the Inner-house.

By the *Regulations 1672*. It is Appointed, That there be an *Book of Enrolment of Processes*, to be discust in the *Inner-house*, as *Reasons of Reduction of Heretable Rights*, or *Annualrents out of Lands*, *Declarators of Rights* thereof, *Probations of Tenors of Writs* destroy'd, or lost, *Cessiones bonorum*, and whereupon Report of *Dispute* from the *Outter-house*, The *Lords*, for the Importance, *Intricacy of the Points Reported*, Ordain the Cause to be Reported to the whole *Lords*, and these Causes are Enroll'd, according to the Date of the great *Avifandum* made by the *Ordinary* in the *Outter-house*, as it stands

Writ-

Written upon the *Act*, by the Clerk of the *Process*, or according to the Date of the *Lords Deliverance*, Appointing the Cause to be hear'd in their *Presence*.

There's another Book of *Inrolment* for *Concluded Causes*, whereof the *Probation* is to be advis'd by the *Lords*, and the *Processes* are to be inserted according to the Date of the Conclusion of the Cause.

These two Books for the *Inner-House*, are kept by one appointed by the *Lord Chancellor*, as keeper of the *Great-Seal* of *Scotland*.

The duty of this *Keeper* is to attend in the *Session-House*, each *Saturday*, from two to three clock in the Afternoon, and to insert in the respective Books, the proper *Processes* that shall be offered to him; and on *Monday* or oftner, need be to affix a Roll, both of *Processes* to be Discusst in the *Inner-House*, and of *Concluded Causes*, in all things conform to the Books; and to add to the Causes in the Roll for Subsequent Weeks, in the same manner as is appointed for the Rolls in the *Outter-House*, and both these Rolls, and Books, to express the Day of uptaking the *Process*, and the day of the great *Avisandum*, and the Date of the Ordinance of the *Lords* for a hearing in presence,

For each *Proces In.* { *Causes to be Discusst* 00 2 6
roll'd, in the *Book of* { *Concluded Causes* 00 1 0

He is to Exact no more for himself or his
Servant.

The *Keeper* is to observe the above Rules
and to take an Oath for that effect, and if he
Transgress he will be Depriv'd and further
Punished, by the *Lords* as they shall see Cause.

Of the Clerk to the Minute-Book.

The *Minut Book* was introduced to make
known to all Persons concern'd, the *Acts*, *De-*
creets and other Judicial Proceedings before
the *Lords of Session*, as well in the *Inner-House*
as in the *Outter-House*.

The *Clerk to the Minut Book*, commonly
call'd the *Keeper of the Minut Book*, receives his
Commission from the *Lord Clerk of Register*
and his Office is to *Note* and *Insert* in this
Book, all *Acts* and *Decreets*, with the day when
Pronounced, by the *Lords*, the Name of the
Judge, of the *Pursuer* and *Defender*, with the
Name of the *Advocate* for the *Pursuer*, and the
Initial Letters of the *Principal Clerk's Name* in
whose Office the *Process* is, and of the *Under-*
Clerks Name, who is *Clerk* thereto. Herein is
set down all *Protestations*, and generally every
other *Judicial Act*, whereupon an *Extract* is
competent to follow; for which purpose, he
has a particular *Desk*, Adjoining to the *Bench*

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Of the College of Justice.

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in the *Outter-House*, where he sits and marks what is done, but for his further security he inspects and Transcribs the *Minute Books* kept by each *Clerk*, both of the *Inner-House* and *Outter-House*. He has no appointed *Salary*, but the *Fees* and *perquisits* of his Office are considerable, and as follow.

His Fees

Sterling,
lib. sh. d.

For marking a Condescendance of the date of <i>Advocation</i> or <i>Suspension</i>	}	00 00 06
For Scoring a <i>Protestation</i> because the <i>Ad</i> <i>vo.</i> or <i>Susp.</i> is	{ call'd for before the first day of Compearance <i>Sleeping</i> Formerly call'd and produced. . . .	00 00 06 00 00 06 00 00 06
For a Warrant to Extract,	{ <i>Protestation</i> { Producing &c. for not { Insisting &c. <i>Protestation</i> and Remit	00 01 00 00 01 00 00 01 00
At Producing <i>Advocation</i> or <i>Suspension</i> call'd for at the <i>Minute Book</i>		00 00 06
At Extracting Decrees in Processes		00 00 06
For Signing a Declaration	{ That { <i>Advocation</i> } Was for- Or { <i>Suspension</i> } merly A Decreet { Fore is in { or Absence }	00 02 06 00 02 06
On any other occasion		00 02 06
For Searching the <i>Minute Book</i> Year and Day back, for Years one or more within 10 : : : :		00 02 06

When

When the Search is beyond Ten Years, the Payment is above an half Crown proportion'd to the Number of Years.

When a *Decreet* is put up in the *Minute Book* against many *Defenders*, a Gratuity lesser or greater is payed, according to the length of the Roll, of the Names of the *Defenders*.

Of the Clerks to the Bills.

There are two *principal Clerks* to the *Bills*, appointed by Commission from the *Lord Clerk Register*, and under these there are three *Depute Clerks* nominated by the principals. They all serve in an Office, call'd the *Bill-Chamber*, where the *Writers* to the *Signet*, and their *Servants*, present their *Bills* as well for *Letters of Suspension* and *Advocation*, as for other *Letters*, such as *Letters of Hornings*, of *Captions*, of *Arrestments*, of *Inhibition*, of loosing *Arrestment*, of *Lamburnows*, &c. And the *Bills* for such *Summons*, as by the *Practick* are *Exped* upon a *Bill*, as, *Summons* of *Adjudication*, of *Reduction*, *Improbation* and *Declarator*, &c. For receiving these *Bills*, the *Clerks* are to attend each *Session Day*, from 9 in the Morning, And at ten they carry to the Ordinary their *Bills* which are considered, and past betwixt and twelve, at two in the Afternoon they return to their Office, and attend till Six, in the *Vacation* time, *Tuesday* and *Thursday* only are the appointed

pointed days for considering and passing the Bills, that come to this Office. But every day, and at all hours for *Business*, this Office is Patent, and the Clerks are to be found.

The principal Clerks are in use to attend Monthly in their turns, and their duty is to present these Bills to the Lord Ordinary to the Bills, and except the Bills for Letters of Suspension and Advocation, (which require a more serious Consideration, because by passing or refusing these Unadvisedly, the Leidges may sustain great loss, or the Course of Justice may be stopt) all other Bills are past in Course, and They are Signed by the Ordinary and Principal Clerk.

The Under-Clerks write, upon the Common Bills, but the duty of one of them, is to receive Bonds of Cautionry in all Suspensions of Decrets for Civil Debts, and to enquire after the Condition of the Cautioners: This Clerk takes care, that the Bills of Suspension be considered by the Ordinary, and that Coppies thereof be given to the Charger or his Writer, or Advocat, in order to Answer the Reasons of Suspension, if it be so appointed, by the Lord Ordinary to each the Bills, the other two Clerks receive Cautioners in Loosings of Arrestment, and in Suspensions of Charges of Lamburrows, they keep the Register of allowances and abbreviats of Decrets of Comprizing, and of Decrets of Adjudication, from which the chief part of their Employments does arise.

The

The Fees of the Clerks to the Bills.

Sterling
lib. sh. d.

For Bills.	: : : : : : : :	00	00	00	
<i>Acts of Caution</i> with the Releif					
which comprehends <i>Bills of Suspension</i>		00	06	01	
<i>Relaxations (per se)</i>	: : : : :	00	00	06	
In <i>Suspensions</i> and <i>Relaxations</i> 6 ² ₃ is					
to be pay'd for every one after the					
cheif Person, till they come the length					
of ten Persons, and no allowance is					
to be granted, to any exceeding that					
Number, nor for a Community					
more than the Number of Ten					
For Receaving the <i>Bond of Cau-</i>					
<i>tionry in Suspensions.</i>	: : : : :	00	01	00	
For <i>Commissions.</i>	: : : : :	00	01	01	
Dispensations in favours of a	{ Party:	00	00	00	
	{ Sherrifdome	00	00	06	
	{ Stewarty	00	00	06	
	{ Burgh.	00	00	06	
<i>Acts of Law burrows</i> for every					
Person.	: : : : :	00	00	06	
<i>Advocations.</i>	: : : : :	00	01	08	
For Recording the	{ Two Sheets.	00	03	04	
abbrevat of a De-	{ More than				
creet of <i>Adjudication</i> , if	{ two Sheets.	00	06	08	
contain'd in,					

For

Sterling.

lib. sh. d.

For loofeing of Arrestments.

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For Receiving the Bond of

Cautionry either in Suspension

or in loofeing of Arrestment, &c.

00 01 00

Of the Macers.

The *Macers* are the Proper servants in this Court of Session ; They are four in Number, Three whereof are Nominated by the Sovereign. The other has a Commission from Monseif of Reidie, who by a grant from

is appointed Heretable Macer before the Lords of Session, and is allow'd to serve by a Depute.

The *Macers* are common Cryers of all Causes, and their Office is, to call Audibly at the appointment of a Lord Ordinary, the Name of Parties, of their Advocats, that they may Compare, either in the Inner-house, or in the Outer-house, to Answer before the Lords : They serve in a Black-Gown, with a Silver Mace in their Hand. One of them attends constantly on the Lord Ordinary, in the Outer-House Bench, another attends the Lord-Ordinary at the Side-barr, and two wait upon the Lords in the Inner-house, They put to Execution the immediate Orders of the Lords, as to Cite, and Apprehend parties on Summar Complaints, to Imprison Advocats-Servants for detaining Process, And its

'its their part to keep in the *Session-house* good order among the Inferiour Servants, and common People.

The *Macers*, are the Supreme *Judges* in the Service of all *Briefes* taken out of the *Chancery*, and in the Case of Incompetency or iniquity of *Inferiour Judges*, the *Lords Advocat*, the Service to the *Macers*: As also, because no *Judge* can serve a Person *Heir* special in Lands lying without his Territory; Therefore, the Service of Gentlemen, who have Lands in several *Shires*, is Expede before the *Macers*, as *Universal Judges*, Not only so, but the Service of *Tutors* in Law, of *Idiotry*, and generally all others are Expede before them; and when *Causes* of this kind are *Advocated* from *Inferiour Courts* to the *Macers*, because of the Intricacy thereof. As is mentioned in the *Form of Process*, The *Lords* are in use to Join some of their Number as *Assessors* to Direct them, and sometime the whole *Bench* sit in the Inquest upon the Service, for the *Lords* are not in the first instance *Judges* Competent to the Service of *Briefes*.

The Fees of the Macers.

In Processes at Extract- ing	Protestati- on for not	Producing at the Minute Book Ad- vocation or Suspen- sion.	Sterling,		
			lib.	sh.	d.
		Insisting in an Or- dinary Action.	00	01	00
	The Acts		00	01	00
	Decrets		00	02	00

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Sterling.

lib. sh. d.

At Parties giving Oath	In the Session	00	02	00
	Upon Commission	00	01	00
At a Witnesses Deponing	In the Session	00	01	00
	Upon Commission	00	00	06

For putting to Execution a Caption for Wrongous detaining a Proceſs 00 02 06

The Fee for Serving Brieves, is according to the Quality of the Perſon, or value of the Cauſe, and as Parties do agree with the Maſters.

An Advocat at his Admiſſion gives a Guinea as a Gratiuity.

Of the Keepers of the Session-houſe.

The *Session-houſe* is kept by two Perſons call'd *Keepers* of the *Session houſe*, and are Nominated by the *Lords of Session*, they have a ſmall Salary, and they, with their *Servants*, attend to open and lock the Doors, they keep the *Gowns* of the *Members*, and do all Menial Service in the *Houſe*.

For ev'ry *Decreet of Adjudication* at *Extracting* there's pay'd to them 1 *ſhill. ſterl.* beſides a Sallary, yearly payed by the *Faculty of Advocats*, out of their Stock to the *Maſter Keepers*; Every *Advocat*, is by an *Act* of the *Faculty*, Ordained to pay them, an half Crown each *Session*, and the *Servants* get a ſmall gratuity.

No

No small part of their Annual perquisites comes from the *Cramers*, in the *Outter-hall* of the *House*, who pay to them a Yearly Rent for their *Stands* and *Crames*.

The Fees in the Court of Commission. &c.

Seeing by the *Act of Parliament* 1707. The *Lords of Council and Session* are Authorized to Judge all Causes, which were formerly referred to the *Commissions of Parliament* for Plantation of *Kirks*, and Valuation of *Tyth*s the said *Lords* pursuant to the Powers given to them towards the rightful ordering of Administration of Justice, have regulated the Fees and Dues payable to the Clerks, and Macers, in that Court, which were not before determin'd and are as follows.

The Prices payable to the Clerk of the Commission for Plantation of Kirks and Valuation of Tythes as settled by an Act of the Lords. November, 17. 1708.

	Sterling.	
	lib.	sh.
For Raising and Signeting a <i>Summons</i> :	00	03
Calling a <i>Summons</i>	00	03
Inrolling a Cause :	00	03
<i>Acts</i> and <i>Diligences</i> , each sheet besides <i>Signet</i> :	00	06
<i>Diligence</i> without an <i>Act</i> each sheet :	00	05
<i>Acts</i> at a <i>Ministers</i> instance for		

Of the Colledge of Justice.

Ixxv

Sterling.

his Stipend or augmentation	lib.	sh.	d.
thereof each sheet.	:	:	00 04 01 ¹ / ₃
Calling an <i>Aet</i>	:	:	00 02 06
A <i>Parties Oath</i>	:	:	00 03 00
A <i>Witness's Oath</i>	:	:	00 02 00
Inrolling in the Roll of <i>Causes</i>			
to be prepared	:	:	00 05 00
Preparing a <i>Cause</i> to be modified by the <i>Lord Ordinary</i> , not under 5 <i>sh.</i> not above 10 <i>sh.</i>			
Inrolling in the Roll of <i>Concluded Causes</i> to be prepar'd	:	:	00 05 00
Petitions	:	:	00 05 00
Answers	:	:	00 05 00
Each Production	:	:	00 05 00
Calling a <i>Cause</i> by warrant from the <i>Lords</i>	:	:	00 07 06
Attending <i>Ordinaries</i> at making Localities for all the <i>Dyets</i> .			00 10 00
<i>Valuation</i>			03 00 00
<i>Approbation</i>			03 00 00
<i>Sale of Tythes</i>			03 00 00
<i>Erection</i>			03 00 00
<i>Decrets</i> of <i>Prorogation</i>			03 00 00
<i>Reduction</i>			03 00 00
<i>Absolvitor</i>			03 00 00
<i>Annexation</i>			03 00 00
<i>Disjunction</i>			03 00 00
All other <i>Decrets</i>			03 00 00
The <i>Extracts</i> of all <i>Decrets</i> at a			

Mi

	Sterling.		
	lib.	sh.	d.
Ministers instance for his own Stipend. or Augmentation	02	00	00

The Fees of the Macers in the Commission, appointed by an Act of the Lords of the Commission, dated December 22. 1708.

	Sterling.		
	lib.	sh.	d.
For calling a Summonds	00	02	06
An Act	00	02	00
A Parties Oath either in Court or on Commission	00	02	06
A Witness's Oath	00	02	00
A Protestation	00	02	00
Decrets at th ^e instance of Heretors or Tacksmen	00	05	00
Decrets at th ^e instance of a Minister for Stipend	00	03	04
Executing a Caption for returning Processes	00	05	00

These Prices, are declar'd to be in full of all to be exacted, for Fees or Drinkmoney, or any other pretence whatever, either by Clerk, or the Macers of Court, who, with the Serpents, are enjoined punctually to observe the above Prices: With Certification, if they failzie, they shall pay for the first transgression 100 pound Scots, one half to the Party Complainer, and the other half to be Dispos'd of, to such Pious Uses as the Lords shall think fit.

For

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Mr. R
Ben

Mr. Jo
Muche

Mr. Jo
Carnag

Mr. Pa
Camp

Mr. Ch
Ares

Of the Colledge of Justice. lxxvii

For the second Fault, they pay 200 pound Scots to be divided as the former.

For the third Malversation, Deprivation and Removing from their Respective Offices.

The Names of the Advocats who are in the Office of the Faculty.

The Dean of Faculty.

Mr. Robert Bennet { Admitted Advocat June 21. 1672
Chosen Dean and Continued yearly since June 11. 1696

The Treasurer of the Faculty.

Mr. John Mitchelson { Admitted Advocat Nov: 16. 1694
Chosen Treajurer and continued, &c. Jan: 6. 1702

Curators of the Library.

Mr. John Carnagie { Admitted Advocat Jan: 26. 1703
Chosen Curator at the Anniversary in January. 1709

Mr. Patrick Campbell { Admitted Advocat Nov: 30. 1709
Chosen Curator &c. Jan: 1710

Mr. Charles Areskin { Admitted Advocat June 24. 1704
Chosen Curator &c. Jan: 1711
Keepers

Keepers of the Library.

Mr. John	{	Admitted Advocat	Dec: 24. 1696
Spotiswood		Made Keeper, &c.	July 8. 1702
Mr. Adam	{	Admitted Advocat	June 26. 1700
Colt		Made Keeper &c.	Jan: 16. 1703
Mr. Willia ^m	{	Admitted Advocat	Feb: 15. 1696
Forbes		Made Keeper &c.	June 23. 1705

Clerks to the Faculty.

Mr. *Adam* } Admitted Clerk to the
Colt } Faculty, and continu-
ed since : : *Jan: 16. 1703*

Mr. *William* } Admitted conjunct
Forbes } Clerk, and continu-
ed since : : *June 23. 1705*

Privat Examiner's for the Year 1711.

Mr. John Horn	Janr. 13	1691
Mr. George Hutcheson	Novr. 13.	1695
Mr. Alexr. Abercromby	Janr. 31.	1696
Mr. Andrew Ramsay	Janr. 29.	1704
Mr. Robert Dundass	July 8	1708
Mr. John Stuart	Feb. 21.	1710
Mr. Hugh Dalrymple	Novr. 21	1710
Sir. Henry Stirling	Novr: 25.	1710
Mr. George M'kenzie	Decr, 7	1711

Pub-

Of the Colledge of Justice. lxxix

Publick Examinators for the Year 1711.

	Admitted Advocats,
1696	
1702	Mr. John Spotiswood Decr. 24 1696
1700	Mr. Alex. Hay July 9. 1697
1703	Mr. Thomas Rig Der. 2 1697
1696	Mr. Alex. Menzies July 27. 1700
1705	Mr. Colen M'kenzie Feb. 13. 1071
	Mr. Alex. Falconer Feb. 21. 1071
	Mr. Andrew Massy Janr. 15. 1702
	Mr. James Dundas Feb. 19. 1702
	Mr. Thomas Menzies March 13. 1707
1703	Mr. Robert Alexander Feb. 11. 1708
	Mr. Andrew M'dougal Feb. 25. 1708
	Mr. John Kennidy July 6. 1709
1705	Mr. Duncan Forbes July 26. 1709
I I.	Mr. William Scot Junr. Feb. 9. 1710
	Mr. Thomas Boid Janr 2: 1711

The Names of the Clerks, and other Members of Session.

David Earl of Glasgow, Lord Clerk Register.
By Commission under the Great-Seal of Scotland
July 16. 1708 Admitted July 31. 1708.

The Principal Clerks of Session.

Admitted,
Mr. John M'kenzie Advocat, June 19. 1986
Mr. Alex. Gibson Novr. 3. 1685
Sir

The Present State

Admitted.

Sir James Justice Advocat Decr. 10. 1689
 Mr. Robert Alex. Advocat Decr. 7. 1693
 Mr. James Hamilton writer to the
 Signet : : : June 1. 1697
 Mr. John Dalrymple Advocat Feb. 18 1709

The Under Clerks of Session.

Gaven Hamilton Novr. 10. 1687
 William Wilson Novr. 1: 1690
 William Robertson Decr. 6: 1692
 Thomas Hay June 3: 1699
 Alex Finlayson Novr: 1. 1705
 George Livingston June 1707

The Principal Clerks to the Bills.

Sir Alex. Anstruther Advocat Decr: 21 1694
 William Kelso Writer Janr: 1710

The Under Clerks to the Bills

James Nicolson Clerk to the Bills
 of Suspension. : : :

Clerks to the Lawbor-
 James Sinclair rows, losing of Arrest-
 Gilbert Mackye } ments, and Record-
 ing Adjudications. Dec: 1705

Keeper of the Minut Book.

Mr. Patrick Fulcomer, Novr: ii. 1684
 Mr. James Craig, Keeper of the Books of En-
 rollment Admit-

Of the College of Justice lxxxix

ed.
1689
1693
 Admitted Keeper of } Outter-house Feb: 27: 1705
 the Books of Enrol- }
 ment for the } Inner-house June: 5: 1708

The Macers

	Admitted
Charles Maitland	Decr: 17 1681
Andrew Graham	Novr: 15 1704
Patrick Grant	Decr: 7. 1705
John Mitchel	June 8. 1711
Jo: Johnston } Keepers of	June 20. 1664
William Smith } the Session-house	June 31 1707

1687
1690
1692
1699
1705
1707
 The Officers concerned in the Commission
 for planting Kirks, and Valueing Tythes,
 &c. Are

The Clerk.

	Admitted,
Mr. Geo: Buchan Writer	March 26 1707

The Macers

David Graham	}	Eod die
John Hog		
Robert Bannatyne		

Of the Writers to the Signet.

1684
En-
mit-
 Having given an account of the Persons
 who are immediately concern'd in Processes be-

fore

for the *Lords*; It remains that we give an account of the *Writers to the Signet*, who are *Members of the College of Justice*, for it is upon the *Summons* and *Letters* which none other, beside them, can form and sign, that all *Processes* before the *Lords* are founded, they are *Deputs* to the *Secretary of State*, who, by vertue of his Office, is *Keeper of the Queens Signet*, The *Society of Writers*, made up of *Gentlemen*, who have had their Education in a *Writing-Chamber*, where all sorts of *Summons*, *Letters*, *Rights*, and *Conveyances of Lands*, and of *Goods Moveable and Unmoveable* are written, and none can be admitted *Writer to the Signet*, except they can, by their *Indentures* discharged, instruct that they have faithfully and honestly served a *Writer to the Signet* for three Years at least.

Their Office and Priviledge is to write all *Writs*, as *Summons*, *Letters*, *Signatures* and *Precepts* which must pass the *Queens Signet*, for which, cause they are likewise called, *Clerks to the Signet*. These *Summons* and *Precepts* are signed by the *Writers*, without whose Subscription they cannot pass, and, by their experience, they're presum'd to understand better than any other, the Nature and Stile of all other *Writs* and *Securities*, which are signed by private Persons, as *Bonds*, *Discharges*, *Assignations* to *Sum* of Money, or other moveable Goods, and

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Also *Dispositions*, and other Rights of Lands and real Estate, and tho', for this Reason, they are for the most part imploy'd in forming such *Writs*, Nevertheless, any other Person who has skill, (with this distinction that they get but two parts of the Rates allowed to *Writers to the Signet*) is allow'd to write and draw these Papers, so that, the sole Priviledge, and distinct Office, of a *Writer to the Signet*, lyes in writing Papers which pass the *Signet*.

However, tho' others are allow'd to form *Writs* granted by private Persons, yet they can hinder any *Notar*, or private *Writer* from keeping a publick *Writing-Chamber* in *Edinburgh*, such as they themselves have, but this priviledge, is judged invidious, and very seldome made use of.

By the 16 *Act Parl. anno 1672*. It is Declared, That it shall not be lawful to any Person, to be Clerks to the deduceing of *Comprisings*, which are led by *Dispensation*, within the Town of *Edinburgh*, or to Services led before the *Macers*, except they be *Writers to the Signet*.

Each *Writer to the Signet*, has a publick *Writing-Chamber*, to which the *Clients* resort, and in these *Chambers*, the young Gentlemen, who aspire to be *Advocats*, or Design to be *Writers to the Signet*, are generally Educated; for here only, they can, by practice, Learn the *Stile* and all *Lybels of Actions*, *Writs* and *Segurities*, and the
more

more a *Writer* is employ'd, he has the greater Resort of such Gentlemen.

The *Fees*, which *Writers to the Signet* get for writing, are various according to the Nature and Quality of the *Writ*, and were by the foresaid *Act of Parliament 1672*. Regulated thus

For the first sheet of	Bonds			
	Assignations			
	Translations			
	Tacks			
	Discharges and Writs of that nature and for Summons & all Letters that pass the Signet			

Sterling.

lib. sh. d.

0 01 06

And for each of the rest of the Sheets : : : : 0 01 00

For the first sheet of *Suspensions* and *Advocations* : : : : 0 03 04

For each of the rest of the Sheets : : : : 0 02 02

For the first sheet of	Contracts			
	Dispositions of Lands Annualrents &c. and other Heretable Securities.			
	Charters, Signatures,			
	Precepts in Latine and other Writs of that nature.			
	Comprisings and Services.			

0 05 00

And for each of the rest of the sheets : : : : 0 02 06

When these *Writs* are drawn by Persons, not *Writers to the Signet*, two parts of the above

Rates

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 thus

 Rates are only allow'd: Besides Payment for Writing, they get a gratuity, for pains they are at, in meeting about their *Clients* business, setting his Papers in good order, and making *Inventar*, and in managing of Bargains, for either a Seller or Purchasser, and these Gratuities, for the most part, come to better account than the *Regulation-Payments*: Some *Writers* have a yearly *Pension* established to them for their pains, which is more or less according to the Quality of the *Client*, or the kind of Business, which he may have.

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 Rates

 The head of this *Society of Writers to the Signet*, is the Kings Principal Secretaries of State who grants *Commission* to the *Writers* upon their Admission, and being Keeper of the *Signet*, the *Writers* are, in a manner, their *Deputs*: The Principal Secretarie, commits the Custody and care of the *Signet*, to *Advocats* or *Writtrs*, who wait on the *Signet* at *Edinburgh*, or wherever the *Session* is at the time, and these *Under-Keeper*s, need no be *Writers to the Signet*, tho' formerly they were such; The Secretarie, Names among the *Writers to the Signet*, some to be of their Council, and are call'd *Commissioners*, who direct others in their Duty, these Examine *Intrant Writers* and admit them, they Answer the Doubts of others, which relate to the form and Stile of *Summons* and *Letters*, and they are necessary *Members* in the general Meetings, in order to make *Rules* for the better discharging

ing of their duty, and putting their *Laws* in *Execution*, and for censuring the Malverfers of Ignorant Writers: The *Society*, in their general Meetings, can suspend, or depose a *Writer* upon, good grounds: they have one of their *Members*, whom they call their *Fiscal*, whose Office is, to notice every one that they do their duty, that they observe the Regulations, and the Orders of the *Society*, he gives order to the *Officer* to cite the *Delinquents*, before the *Commissioners*, to Answer *Complaints*, they have a *Clark*, to whom they pay a Sallary, who generally is not *Member* of the *Society*, and one *Officer*, who wairns the *Writers* to the general Meetings, or otherways, according to the order he receives; In absence of the *Secretarie*, these *Keepers* of the *Signet*, preside in all Meetings of the *Writers*, and interpose their Authority to what is done.

They've lately bought a House and Hall, for the use of their *Society*,, where they hold their *Meetings*, and where the *Signet* is kept; this *Office*, in order to *Signet-Letters*, and *Summons*, is, in *Session* time, Patent from 9 to 12, and from 2 to 6. and in *Vacance*, from 10 to 12. and from 2 to 4, On *Munday*, it does not open till two in the Afternoon, in *Session* and in *Vacance* it shuts at 4, and on *Saturday* it is at no time Patent in the Afternoon. In one of the Rooms of this House, the *Writers* begin to make a *Collection* of Books Relateing to their Em-

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Letter

Of the Colloge of Justice. lxxxvii

Employment: their Stock is very considerable, and they maintain a Numerous *Poor* of their *Society*, as are *Writers-wives* and *Children*. The *Fond* designed for this use, is partly what is given at *Admission* of *Writers*, partly *Voluntary Contributions*, *Legacies*, and *Donations*, and ten *Merks Scots*, which ev'ry *Young-Gentleman*, at his *Entry* to a *Writers-Chamber* pays to the *Poors-Box*.

The price at the Signet for Signetting the Summons and Letters which come before the Session.

		Sterling,		
		lib:	sh.	d.
Summons of	whatsoever quality			
	being for one dyet	00	00	10
	Adjudicaons cogniti-			
	ons Causa. : : :	00	00	10
	Wakening, : : :	00	00	10
Letters of	Advocation	00	00	10
	Arrestments	00	00	10
	Caption	00	00	10
	Charge to en-	In General	00	00
	ter Heir			
	Inhibition	In special	00	00
	Lawborrows how many Per-			
	sons loever be insert	00	00	10

	Sterling	lib.	sh	d
Ministers for their Stipend	00	00	00	00
Relaxation. : : : :	00	00	00	00
and accordingly for every				
Person Relaxed or Composition,				
at the discretion of				
the Keeper of the Signet.				
Suppliment	00	00	00	00
All other sorts not here				
Specified	00	00	00	00
Inhibition and Arrestment joined				
in one Write	00	01	04	00
Summons for two Dyets.	00	01	08	00
Horning	00	02	07	00
Letters of { Horning Poynding and				
Arrestments	00	03	00	00

These are the Rates payed for every Cause at the Signet, by Causes here is mean'd, the several Bonds, Tickets, Decreets, &c. where on Letters or Summons proceed, so that each of these is reckoned a Cause, and the dues for Signeting are payed in the same manner, as if special Letters or Summons were rais'd on every one of these Bonds, &c. tho when any number are Accumulated in one Writ of Summons, or Letters, the Keeper of the Signet is at use to quite some of them.

The clerk

Jame.

Wm. J.
Sir W.

Geo. J.
Geo.

Sir J.
John
John
Mr. T.
Colen
Mr. V.
Mr. J.
Mr. J.
Thom.
Mr. S.

Do

Of the College of Justice lxxxix

The chief Officers in the Society of Writers.

The Secretarys of State

James Duke of Queensberry and Dover;
Earl of Dartmouth.
St. John Esquire.

The Keepers of the Signet.

Admitted

Wm. Alves Writer to the Signet, }
Sir Wm. Catherwood Advocat. } Janr. 16. 1711
Deput Keepers.

Geo: Faa

Geo. Kennedy

{

eodem die.

The Commissioners.

Sir James Elphinston	George Turnbull;
John Strachan,	Mr. Arthur Forbes;
John Cunningham	John Stuart Senior,
Mr. Thomas Aikman,	Robert Campbell,
Colen Campbell	James Baird,
Mr. William Dallas,	William Alves,
Mr. Jo. Montgomery,	Patrick Scot,
Mr. James Anderson,	Charles Bell,
Thomas Pringle,	Robert Wallace,
Mr. James Bailie,	John Lumsden,

Pa.

The present State,

Patrick Home,
 Ronald Campbel,
 Alex. Glass
 Hugh Sumnerwel

William Innes,
 Robert Dalrymple,
 Lodovick Brodie

Thesaurer.

Mr. James Baillie

Fiscal

Mr. James Boyes

George Faa

George Kennedy

{ Decr. 21. 1710

{ Clerks.

Of the Priviledge of the College of Justice

Before we shew the priviledges belonging to the Members of the Session: It is fit to know who are Members, and to whom these Priviledges belong.

By an Act of Sederunt in February 1687, made upon, and in relation to, a Process of Declarator of Priviledges, rais'd at the instance of the Members of the College of Justice, against the Magistrats, and City of Edinburgh, before the Lords of Session: The Persons following, are declar'd to be Members of the College of Justice, and to have right to the Priviledges aftermentioned. viz. The Lords of Session, Advocats, Clerks of Session, the Clerks to the Bills, the Writers to the Signet, the Deputs of the Clerks of the Session, who serve in the Outter-house, and their Substitutes for Registrations, being one in each Clerks Office: The three Deputes of the Clerks to the Bills, the Clerks of Exchequer, the

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Of the College of Justice. xci

Directors of the Chancellery their Depute, and two Clerks thereof, the Writer to the Privy Seal and his Depute, the Clerk of the General Register of Seatings and Hornings, the Macers of the Session, the Keeper of the Minute-Book, the Keeper of the Rolls of the Inner and Outter-house: And the Lords do extend the Priviledges foresaid to the Persons following. viz. One actual Servant of each Lord of the Session, one Servant of each Advocat, Four Extracters in each of the three Clerks Offices of the Session, Two Servants, employ'd by the Clerk of Register in keeping the Publick Registers, The Keeper of the Session-house, and the Keeper of the Advocats Library, but if any of these Servants, and others to whom the foresaid Priviledges are extended, shall keep Merchand Shops, Taverns, or Ale-houses, or exercise any other Trade within the Burgh, they shall not enjoy any of the Priviledges belonging to the Members of the College of Justice.

These Priviledges are many, and first, for preserving Peace and quiet about the House, by Act 173, Parl. 13. Ja. 6. 'It is declared 'Treason, for to strike, hurt, or slay any Person within the Inner-house, the time that the Lords are sitting, and to do the same within the Outter-house, the time foresaid, is Death.

By Act 39th Parl. 6. of Q. Mary Anno 1556, 'And by constant custome, no Inferior Judges are

' are competent to *Causes* belonging to *Members of the College of Justice.*

The Members are free from Watching Warding and other Services within *Burgh*, by *Act* 153. *Parl.* 12. *Ja.* 6. ' Tho in time of intestine Motions, and publick Troubles in the Kingdom, they voluntarily Arm themselves and the *Advocats* and *Writers to the Signet* are Regimented, they choise their own Officers, and Commanders they have their *Ensigns* and *Colours*, and keep the Guard in the *Parliament-house*.

And by the foresaid *Act of Sederunt* in the year 1687. The *Lords of Council and Session* Decerned and Declared; ' The Members of the College of Justice free from Payment of the Annuity of the Ministers Stipends, and from Watching, and Warding, and any Impositions for the same, and from Payment of any Customs, Calfey Mails, Shoar Dues, and other Impositions lay'd on their Provisions of Meat and Drink for their Families, and their other Goods carryed to, or from the Town, and collected at the Ports or other places, within the Liberties of the Town. And the *Lords* Declared, ' The produceing a Certificat subscribed by a Member of the College of Justice, bearing that the Goods do properly belong to him, shall be sufficient for freeing them from Payment of the

Of the College of Justice. xciii

Mem^o the said Customs and Impositions, The Cer-
tificate being renewed once in the half year
at least.

The Members of the *College of Justice* are al-
so to be exeem'd from the Civil Jurisdicti-
ons of the Magistrats of *Edinburgh*, and that
upon their propounding *Declinator* thereof, the
Magistrats ought to desist from any procedure
against them, without necessity of *Advoca-
tion*.

And when a Taxation or *Cess* is imposed
by *Parliament*, To which the Members of the
College of Justice are or shall be lyable, the
Lords ordain a special and distinct *Stent* to be
made upon the *Town* or *Suburbs*, for the *Quota*
impos'd, and so much more only as may de-
fray the Incident Charges of the *Collecting* the
the same, wherein no Exemption shall be gi-
ven to the *Magistrats*, *Stentmasters* or other
Persons, but that they be *Stented*, for their
proportions of these *Impositions*, as well as o-
ther *Inhabitants*; and likewise that the *Teme-
ments* belonging to *Trades*, be *Stented* and the
Towns Common Good, where the same consists
in *Land*, or *Few Duty*,s and doth not bear *Bur-
then* with the *Shire*; but prejudice to the *Town*
of *Edinburgh*, if they think fit, to lay on the
Proportions of these who have been in use to
be Exempted, upon their own *Neighbours*, but
not upon any Member of the *College of Justice*,
And to the end these *Impositions* warranted
by

by Publick Authority, may be equally laid on and these of the *College of Justice* who are *Hretors*, not *Burdened* beyond their just proportions; The *Lords* declared that they will from time to time, Nominate one *Advocat*, and one *Writer* to the *Signet*, for each Quarter of the *Town*, to meet with the *Stentmasters*, who shall be appointed by the *Magistrats* at their taking of the *Survey*, and *Valuation* of the whole *Tenements* with in the *Burgh* and *Suburbs*, and of the *Trade* of the *Burgesses*, which is in use to be *Stented*, and to bear a part of the *Burden* of the *Cess*, and to be present at all their meetings for imposing of the *Stent*, and to see that the *Valuation* be *Justly* and *equally* made, and the *Stent* laid on accordingly, and for that effect appoints the *Magistrats* to make *Intimation* of the time of the *Stentmasters* meeting, to the *Lord President* of the *Session*, the *Dean of Faculty*, and to the *Keeper* of the *Signet*, ten days before, in the time of *Session*, and twenty days, in the time of *Vacance*.

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Form of Process,

B E F O R E T H E

Lords of Council and Session,
Conform to the present Practique.

The INTRODUCTION.

B*T Process is here mean'd, the Order and Diverse steps or Procedure of (Parties) Pursuer and Defender before a Judge, from the first Intenting of an Action to the final Determination of the Cause.*

Process is either Ordinary or Summar, Ordinary, or, as called in our Practique, Process via ordinaria, is, when Causes, or (which is the same) when Actions are Cognosced in the full and solemn order of Law, without omitting any of the Accustomed Solemnities, Summar Process is, That where in several Solemnities are dispensed with, and the Cause is summarly and plainly Judged.

The Ordinary Processes before the Lords of Session, are these which proceed upon Letters or Summons under the Signet; and which abide the Course of the Rolls, as shall be hereafter declared.

Summar Processes are such, as are Cognosced briefly upon a Bill, and which are not tyed to the formalities of the Ordinary Process, Examples whereof are Bills of Complaint against the Contemnners of the Authority of the Lords, or against any of the Members of the Colledge of Justice, malversing in matters relating to their Employment, Advocations and Suspensions, when Discussed upon the Bill, and others.

All Civil Actions before the Lords, can be made Ordinary, none can be made Summar, except Advocations and Suspensions; and even that cannot be done without consent of the Party, as in Advocations, the Pursuer of the Principal Cause, and the Charger, in Suspensions.

Action in the most extensive Signification, is a Right which every one hath to Pursue and seek in Judgment (i. e. by the interposition of the Authority of a Judge) any thing that belongeth to us.

This Right concerns our Person or Estate, in acquiring, in Defending or recovering what belongs thereto, and by causing Punishment Corporal or Pecunial, be inflicted on these who wrong us in our Person or Goods, which Twofold Consideration gives rise to the Division of Actions into Civil and Criminal.

But by Action is here understood a Claim or demand Civil, that one maketh against another, which is contained in a Libel or Writ, declaring in the formal or usual stile of the Court, what the Pursu-

The Introduction.

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er asks of the Defender ; And this Writing according to the variety of things, and diverse Conclusions and Judgments craved by the Parties, is called by different Names.

The most General are, Letters and Summons which again are divided into diverse sorts. The Word Letters for the most part, is made use of to signifie Writes tending to Execution, or for Security of the Party, as Letters of Horning, Caption, Inhibition, &c. And Summons is applied to Writs, whereby a Party is Cited to Compear before a Judge, to hear Decreet at the instance of the Pursuer to be pronounced against him in Relation to the matter Libelled, which go under the Name of Ordinary Actions ; But there are likeways Letters, whereby Parties are Cited to hear and see certain things done in Relation to Actions or DECREETS, as by Letters of Advocation, when at a Defenders Instance, The Pursuer of a Cause, before an Inferior Court, is Cited at the Instance of the Defender, to Compear before the Lords, to hear and see the said Cause Advocated and taken from the Inferior Judge and brought before the Lords as only Judges Competent, because of sundry Relevant Reasons mentioned in the Letters : As in like manner by Letters of Suspension, the Party Charger is Cited by the Person, against whom Decreet is obtained and Horning Executed, to Compear before the Lords to hear and see the Letters of Horning, and all other Execution competent to follow on that Decreet Suspended for Diverse just Reasons, expressed in the Letters.

Hence

The Introduction.

Hence, It is manifest, That in all Processes, there is necessarily a Pursuer and Defender, and the Judge. But because Parties cannot express and declare their Claimes and Defences in form of Law, they call to their assistance, Persons Learned in the Law, and by the Judge found qualified and Authorised, to plead Causes, and to give Council therein, who are called Procurators or Advocats; As also, because the Judge cannot take on himself the trouble of Writing and Noteing in Minute, the various Representations of the Parties, or their Procurators therefore a Clerk is appointed to write the Pleadings, prepare the Cause for the Judge, and give Extracts of his Sentence; So that three Persons are necessary in every Process, The Judge, Procurator, and Clerk (who in respect of the place they sit in to do Justice) are called a Court, the other Servants which in some Courts are more numerous than in others need not be spoke of here, and seeing those concerned in the Session are treated of elsewhere divers other speculations which might be thought pertinent here are laid aside: The design of this Essay being to declare the Order of Procedure in discussing Advocations & Suspensions & in judging & determining the most Ordinary Actions, whereby the Form of Process, in so far as Actions in general, which are judged by the Lords of Session, have in common with one another, will be sufficiently manifest and known, an exact disquisition of Actions, or a particular Consideration of their various kinds, with their peculiar Qualities and specifick difference not being here intended.

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Title I.

The Form of *PROCESS* in ADVOCATIONS.

WHen an *Inferior Judge* is Incompetent, for the Action Pursued before him, or being Competent, Pronounces *Interlocutors* contrar to Law, the Party Lefed, has Remedy by *Advocating* (or taking from him) the Cause to the *Lords of Session*, which is done by presenting to the *Clerk of the Bills*, a *Bill of Advocation*, Drawn and Sign'd by a *Writer to the Signet*, in the usual Form; on the Back whereof, the *Clerk* Writes the day on which it is presented, and carries it to the *Ordinary* on the Bills, who Considers the *Reasons*, and finding them either not Relevant or Insufficient, Refuses the *Bill*; which Refusal is by the *Ordinary* marked on the Back thereof, and thereafter no other *Ordinary* can pass the said *Bill*: And if a new *Bill of Advocation*, on the same or other *Reasons*, be Desired, to be presented to another Lord, being *Ordinary* for the time, the *Clerk of the Bills* (who keeps a *Minut Book* both of past and refused *Bills*,) is ordained to present to the said *Ordinary* the *Bill* which was refused. In which Case, the *Ordinary*, if he please may Report the *Reasons* to the whole
Lords

Lords in time of *Session*, and to three Lords in time of *Vacance*: Upon which Report, either passes, or is for a second time refused, and if refused, a *Bill* upon these *Reasons* can never be presented; but if it happen that an *Ordinary* refuses to make Report of the *Reasons* of *Advocation*, to the Lords, the Party who Judges the same to be relevant, and, if Reported, thinks they would be sustained, may by a *Petition* to be Read by one of the Innerhouse Clerks, represent to the Lords in presence his *Reasons* of *Advocation*, and crave that they may be considered, and if found Relevant, craves they may pass his *Bill*, or recommend to the *Ordinary* the passing thereof; Which *Petition*, either by itself, or with the *Answers* given thereto, is Advised, and is in place of a Report, upon consideration whereof, the Lords either grant or refuse the desire of the *Petition*; But when a *Bill* of *Advocation* is thus refused by an *Ordinary*, and the Party inclines to have the same pass, in order to avoid the *Objection*, that the *Reasons* were refused already, the practise is, to devise new *Reasons* of *Advocation*, and to Eike them to the former, which jointly considered by the same or any other *Ordinary*, may make the *Bill* to pass without Report, *Quia multa Con-junctim operantur, quæ separatim nullum sortiuntur effectum*.

If the *Reasons* of *Advocation* be doubtful, and the *Ordinary* desires to have the matter more clear

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clear, he ordains the other Party to see and Answer the *Bill* betwixt and a certain Day, and in the mean time he Sifts *Procedure* in the *Principal Cause*, if the *Sift* be *indefinite* & not limited to a certain day, the same is understood to be for Fourteen Days after the date of the *Deliverance* and no longer,

The manner of *Certiorating* the other Party, is by delivering a Copie of the *Bill* to the Servants of the *Bill Chamber*, who by the *Principal Clerk* is ordered to carry the same to the *Advocat* or *Writer* of the Party against whom it is presented, in order to be *Answered* betwixt and the Day assigned by the *Ordinary*; And that even tho' their *Client* be not in Town, for in this Case, it is not requisite, that formal intimation be made to the Party himself: Nevertheless, it is to be observed, when the *Process* in the *Court* is to be stopt, This *Bill* must be intimated in the *Court*, as is hereafter declared. When the Day to which the *Procedure* is Sifted comes, at least so soon as the *Answers* are presented, the *Bill of Advocation*, with the *Answers* are laid before the *Ordinary* on the *Bills* for the time, if it be *Vacance* or if it be *Session*, before the *Ordinary* who gave the *Sift*, who considers the *Reasons* and *Answers* given, and passes or refuses the *Bill* as he sees just.

When the *Reasons* are clear and relevant, The *Ordinary* immediately passes the *Bill*, unless it concerns *Causes Maritim*, depending before

fore the *Jndge Admiral*; The *Advocations* whereof must be presented to the whole Lords in time of *Session*, and to three Lords in time of *Vacance*; Or if the *Advocation* concern *Minister's* or *School-masters* Stipends, the *Bill* is for the most part ordained to be seen and answered. The Deliverance of a past *Bill of Advocation* is in this Form.

'Apud Edinburgum xxviij die Decembris Jajviijcviij.

Fiat Summonitio ut petitur, till the tenth day of January next to come, with continuation of days; and in the mean time, to *Advocat* and *Discharge* ut infra, while the Fifteenth day of the same Month, for the Reasons and Causes within Written.

And thereupon the *Writer* to the *Signet* expects *Letters of Advocation* in common form.

In passing Bills of *Advocation*, the Ordinary is not bound to Examine very narrowly the Relevancy or Truth of the Reasons, it being sufficient, if they seem plausible: For a more exact enquiry is referred to the Discussing of the Cause, as shall be declared hereafter: However it was an Ancient Practice, That no *Advocation* could be presented, without an Authentick Copie of the *Libel* and *Minuts* of *Process* under the Hand of the *Clerk of Court*, or *Instrument* taken against him, upon Refusal; But this is fallen into Desuetude, through this inconvenience

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niency, That when Causes are *Advocated*, the Members of *Inferior Courts* lose the Emoluments that accress to them, if the *Process* were continued in their *Court*; And therefore they use all means possible to prevent the Parties getting *Advocations*; so that when they have any Suspicion thereof, they precipitate the Cause to bring it to a Definitive Sentence, After which no *Advocation* is admitted, for *Advocations* must be Purchast and presented in *Court*, before the Cause come the length of a *Decreet*, and this has made the Lords content themselves with a simple Copie of the *Minuts* of *Process*, and sometimes with a bare *Representation* made in the Bill,

In time of *Session*, when a Party against whom a Bill of *Advocation* is presented, suspects that the same may pass, and is willing instantly to discuss the *Reasons*; He gives in to the whole Lords, a *Petition* craving *Warrant* for that effect, which is granted; and the same being Intimated at the *Bill Chamber* and *Signet Office*, stops passing the *Bill* or Expediting of *Letters* thereupon: And albeit the Bill of *Advocation* be not past, yet this *Petition* stops Procedure in the Principal Cause, as fully, as if *Letters* of *Advocation* were expd and duly Intimated.

Petitions for stopping the passing or Expediting *Advocations*, are of two kinds, First, When the Ingiver of that *Petition* designs

signs to have the Cause Remitted; Then he only craves, That the *Reasons of Advocation* may be Discussed *Summarly* upon the *Bill*; and if, (at discussing) the *Reasons of Advocation* be found not Relevant, then he gets the cause Remitted. Or 2dly. If the *Petitioner* suspect the *Reasons* may be sustained, and consequently that the Cause may be *Advocated in Jure*; or that (albeit the Cause should be Remitted) the *Decreet* to follow might be *Suspended*, then, if the *Defender* be *Advocater*, the *Pursuer* Declares his willingness to have the Cause *Advocated*, and summarly discuss'd.

Before the *Collector* of the *Clerks Dues* can mark the *Petition* for this *Warrant* to Discuss *Summarly*, the Dues payable for Signeting *Letters of Advocation*, which is 10 *shill. Scots*, and 4 *shill.* for *Inrolement*, in Case the *Letters* had been Exped, are Consigned to the same *Collector*.

This *Warrant*, being obtained, is given to an Under Clerk, who makes Intimation thereof in the Outter-house, to the Procurators of the Party who sought *Advocation*, who are called to the Bar before the *Ordinary*, to whom the *Bill of Advocation* was presented, and he Orders Parties to produce in the *Clerks Hands* their several parts of the *Process*, and when produced to see and interchange the same, betwixt and a certain Day, and if, upon the Day prefixt, the *Bill of*

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Advocation be not produc'd, the *Clerk* in presence of the *Lord Ordinary*, Calls the Cause by a *Macer*, and if none compear to produce the *Bill of Advocation*, the said *Ordinary* Admits *Protestation*, and *Remit* for not Production thereof, which is put up into the *Minut-Book*, and if no *Bill* be produced thereafter, the *Protestation* and *Remit* is Extracted in due form; This *Protestation* is a *Judicial Act* granted to a Party, who by *Letters of Advocation* (when expedie) is cited to compear before the *Lords of Session* to Answer, conform to the Tenor thereof, or where a *Bill of Advocation* presented, is ordered to be summarly discussed, and this Party perceiving that he who sought the *Advocation* does not insist against him, he *Protests*, that he be not further obliged to Answer in the *Advocation*, and that the same be of no force, and that the Cause be *Remitted*, which *Protestation* is Admitted; And the Judge Decerns the Pursuer to pay *Fifteen pounds Scots*, which is called *Protestation Money*, and Remits or sends back the Cause to the Court, from which it was Advocated; But if the *Bill of Advocation* be produc'd, the *Ordinary* Ordains both Parties to see and interchange their mutual pieces, i. e. the Pursuer of the Principal Cause, to see the *Bill of Advocation*, and *Instructions* thereof, and the Party *Advocater* or *Defender*, to see the *Lybel*, &c. and to be ready at next hearing, which is equivalent to a *Formal Calling*,
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Out-giving, *Returning* and *Enrolling*, and which makes the *Process of Advocation* summar. After this the Cause proceeds, as if it had come in by the course of the Roll, as shall be shewn hereafter.

When the *Letters of Advocation* are *Signed*, and delivered to the Party, it may be then said that the *Advocation* is expedite, so as no stop from the *Ordinary* can take effect: For tho' the *Bill* be past, or tho' the *Letters* be marked in the *Signet-Book*, and *Signed*, yet if they be not delivered out of the *Signet-Office*, to the Purchaser of the *Advocation*, the Party against whom the *Advocation* is procured, may apply to the *Ordinary*, and get a stop to hinder the Expediting thereof, which is done by a Writing under the *Ordinary's* hand, Directed to the *Clerk of the Bills*, and *Keeper of the Signet*, Discharging them to expedite the *Bill* and *Letters of Advocation* purchas'd by A, against B, Pursuer of the Principal Cause, till both Parties be farther heard, which being duly intimated, will bring the *Bill* back to the *Ordinary*, who upon hearing of Parties, will either refuse the same, or take off the Stop, which must be done by another Writing to be shown to the *Clerk of the Bills*, and *Keeper of the Signet*.

When *Letters of Advocation* are expedite, they must be carry'd to the Court from which the Principal Cause is *Advocated*, and must be shown to the *Judge* and *Clerk* sitting in Judge-
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ment in time of Court, and that before any Sentence Definitive be pronounced, for tho' the Judge and other Members have certain knowledge, that the *Advocation* is expedite, or tho' it were *extra judicially* intimated to them, or to the Pursuer by a *Sheriff* in that part, or *Messenger*, yet except the same be duly intimated in the Court, as is above declared their private knowledge will not hinder the Pursuer of the principal Cause to insist, nor the Judge to determine therein, Therefore the Purchassers of the *Advocation*, or his Procurator, when he produces the *Letters* duely Signeted must crave that his *Advocation* may be admitted by the Judge, and marked accordingly, which being done, puts an effectual stop to all farther procedure in the Principal Cause.

But if at that time it be alledged by the other Parties Procurators, that the *Advocation* cannot be admitted, and he give Reasons therefore; Such as, *That there is Sentence already pronounced*, or, *that the Advocation does not agree with the Libel in the principal Cause*, and the like; In that Case, the Judge may make *Avifandum* with the *Advocation*, till the next Court-day, that he consider the Relevancy and Truth of these Reasons given for Repelling the *Advocation*; And if he sustain the same, as good and true, at the calling of the Cause the next Court-day, he may refuse to admit the *Advocation*, all which is marked in

in the *Minuts* of the *Principal Cause*, in which the Judge may continue to inſiſt, as if no *Advocation* had been preſented, and this may be done even the firſt Court-day, without making any *Aviſandum*, if the Judge be ripe in the matter: But if the *Reasons* againſt admitting the *Advocation*, be either irrelevant or falſe, the *Advocation* is admitted by the Judge and by the Clerk marked accordingly in the Margine of the *Principal Letters*, whereof a Copy is left in the Court; And this Signature on the *Principal Letters* is ſigned by the Clerk; The Letters being thus admitted, need not be farther intimated to the principal Party, becauſe he is preſumed to be warned thereof *apud acta*, and his Procurator may give notice to him of the day, to which he is cited to compear before the *Lords of Seſſion*, and the Copy of the Letters are left in the Court for his better Certification.

The firſt dyet of compearance for the *Defender* in the *Advocation* being come and bygone, the Purſuer of the *Principal Cause* gives in to an Under-Clerk of the Seſſion a Note in order to call for the Letters of *Advocation*, which Note is thus, Copy *Advocation A*, (*raiſer of the Advocation*) againſt *B*. (*Purſuer of the principal Cause*) per *C*. (*the Advocats Name who is employed by the Purſuer of the principal Cause*) Upon this Note the Under-Clerk writes thus, *firſt*, *the day of the Moneth on which he calls for* the

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the *Letters*, and then adds *Protestation* and *Remit*, and subjoins the mark of the Office, wherein he is *Clerk*, which is three *Initial Letters*, two of them for the two *Principal Clerks* Surnames, and the other for the *Sub-Clerks* Surname, and thereafter delivers this Note so marked to the Keeper of the *Minut-Book*, who puts up a *Protestation* and *Remit*, thereby to force the *Production* of the *Letters* of *Advocation*, this *Protestation* cannot be *Extracted* till the second *Dyet* in the *Letters* of *Advocation* be past; However even then there are many ways of stoping and delaying the *Extracting* thereof: As *first*, by shewing the *Advocation*, and instructing to the Keeper of the *Minut-Book*, that the *Protestation* is put up before the first day of *Compearance*, for till that be past the Party *Advocater* is not bound to produce his *Letters* of *Advocation*, and this operates an expunging of the *Protestation* out of the *Minut-Book*, which we call *Scoring* of the *Protestation*, so that the Pursuer of the *principal Cause* must wait till the first day of *Compearance* be past, and put up *Protestation* of new again.

Secondly. Extracting of *Protestation* is stoped by requiring the Party craver thereof, to condescend upon the date of the *Advocation*, which is done by subjoining to the Note of *Protestation* in the *Minut-Book*, a *Clause*, *Intimating*, that the Party against whom *Protestation* is sought, craves that the date of the *Advocation* may be condescended

scended upon, and till that be done, the Extracting of the *Protestation* is stoped; But soon as the date is condescended upon, and *Intimation* thereof made in the Outer-House to the Party concerned, if the *Advocation* be not produced, the *Protestation* may be Extracted. The design of craving that the date of the *Advocation* may be condescended upon, is in case there were diverse other *Advocations* correspondent to as many different Actions betwixt the same Partys, It may be manifest, which of the *Advocations* is sought, or perhaps the *Advocation* is lost or fallen aside, so that the Party *Advocater* craves to know the date, that he may the more readily Extract it, out of the Signet-Office.

Thirdly, In case *Protestation* has not been sought within Year and Day, after the Day of *Compearance* in the *Letters of Advocation*, no *Protestation* can be granted, till the *Advocation*, which, on that account, is said to be *Sleeping*, be wakened, so that if after the date is condescended on, it appears that the *Advocation* is *sleeping*, then the other Party replies at the *Minut-Book*, and instructs that the same is *sleeping*, and gets the *Protestation* to be scored, so that before any *Protestation* can be got, there must be *Summons of Wakening* of the *Advocation* raised at the instance of the *Pursuer* of the principal Cause, and Executed against the *Defender* and *Advocater*, and after the days in the *Summons*

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are run, the same is given to the Under-Clerk with a Note for a *Protestation*, as before, with Addition of the words, *on a Wakening* ; But albeit the *Protestation* be put up Year and Day, after the last Day of Compearance, yet if there was a former *Protestation* put up within the Year, and Scor'd, that will stop *Sleeping*. In making a Condescendance on a Date, it is not needful, that the precise Day of the Month be exprest, for the Party may make a general Condescendance, thus, *That the Advocation is Dated in some of the Days of the Month of June or July 1709, or the like*, for this general Condescendance will operate a *Production* of the *Advocation* : But in case the Condescendance be not true, and that there was no *Advocation* in any of these two Months, The other Party from whom the *Advocation* is sought, procures a *Declaration* from the *Keeper of the Signet Office*, making mention, that there was no *Advocation* betwixt these Parties *Signetted* and *Noted* in his Book, during the Months Condescended upon ; And upon shewing thereof to the *Keeper of the Minut Book*, the *Protestation* put up for not production of such an *Advocation*, will still be stoped, and a further Condescendance of the true Date appointed to be given : And so furth, ay and while the true Date be Condescended upon ; But if *Protestation* be not scored or stoped, as is above declared, a Warrant for *Extracting* thereof, is Subscribed,

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and given out by the *Keeper of the Minut Book*; Which *Warrant* is the *Note* or *Copie* formerly mentioned, given by the Party craver of the *Protestation* to the *Clerk*, bearing a Signature Written and Sign'd by the *Keeper of the Minut-Book*, thus, *Edinburgh 14 June 1709, Given out to be Extracted.*

Tho' this Warrant to Extract the *Protestation* be Subscribed, yet the Extracting thereof may be stopt, by production of the principal *Advocation* to the *Keeper*, while the Warrant is in his Hands, or to the *Clerks*, or the *Extracters* imployed, upon refunding, or consigning in their Hands, the Parties Expences in taking out the *Copie*, and satisfying the Extracter for his pains: And the Expences of Extracting the *Protestation* it self, if the same shall happen to be paid, and so Marked by the Collector of the *Clerks dues*, before presenting and offering the *Advocation* to the *Clerk* or *Extractor*.

After the *Protestation* is thus stopt, The *Keeper of the Minut-book* ought to Write upon the *Advocation*, That the same is produced.

But in case *Advocation* be not produced, *Protestation* and *Remit* is duly *Extracted*, and *Letters of Horning*, for payment of the Fifteen pound of *Protestation Money*, is raised thereon, And

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And the *Cause* is brought back again to the *Inferior Court*, and prosecuted in the same way and manner, as if it had never been *Advocat- ed*.

When the *Letters of Advocation* are produced to the *Keeper* of the *Minut-Book*, he marks upon the back thereof, *Produced per A:* (which stands for the name of the Parties *Advocat*, who raised the *Advocation*) to *B:* (which stands for the Name of the Parties *Advocat*, against whom *Advocation* was purchast, and who sought *Protestation*, whose Name is in the *Minut-book*, as has been told before) And to this is subjoined the said *Clerks* Mark, as in the *Minut-book*, with the Date on which the *Protestation* was put up.

If the Principal *Letters* are lost, the producing of *Extraſts* thereof from the *Signet*, is sufficient, but so are not the *Copies*, even tho' the Parties consent.

After this, the *Letters of Advocation* are carried to the *Clerk* of the *Proceſs*: For it is to be observed, That he who puts up *Protestation*, has the *Nomination* of the *Clerk*, who marks his Name on the back of the *Letters*, and Writes on the *Margine* thereof, a *Calling*, Thus, *The 23d. June 1709, Actor B: alter A. to ſee.* (This Date is the same with that of the *Protestation* in the *Minut-book*, and marked upon the back by the *Keeper*.)

The *Letters* thus marked, are delivered to

The Form of Process.

the *Procurator* for the *Pursuer* in the *Principal Cause*, who is *Defender* in the *Advocation*, and after taking a Note of the *Reasons of Advocation*, he Writes upon the *Libel* or on other part of the *Process*, an *Outgiving*, Thus 24. June 1709, given out to A: (which is the Name of the other Parties *Procurator*,) To see *principal Libel*, two *Executions*, three *Minuts* in the *Process*, at the instance of B: contra C: with their own *Advocation* returned by me D: and is Signed by the *Advocat Outgiver* thereof. Which *Writs* mentioned in the *Outgiving*, with the *Advocation*, are delivered to the *Procurator* mentioned therein, That he may consider the *Process*, and be ready when the *Cause* comes to be Debated; For which end he is allowed to keep the same six days, after which the *Process*, must be returned to the *Procurator Outgiver* thereof, which if he refuse, he can be forced to it by a *Caption*, as shall be shown, when we come to Treat of *Ordinary Actions*; Upon giving back the *Process*, he Writes and Signs a return, which is ordinarily beneath the *Outgiving*, Thus, 1 July 1709, seen and returned by me A.

The *Process* thus seen and returned, is upon the first, or any other subsequent *Saturday* carried to the *Keeper* of the *Outer-House Rolls*, who *Inrolls* the *Cause* in the *Book of Inrolment* for *Advocations*, conform to the date of the return, and Marks upon the Write, which contains the *Outgiving* and *Return*, the Date of

of the Inrolement, Thus, Inrolled, 3 July 1709.

The Cause coming to be called, conform to the *Course of the Roll*, whereof *Parties* and their *Procurators*, may be warned from the *Rolls*, put upon the Walls of the *Session-House* Weekly, or by the Book, which is patent to all: The *Pursuer* of the *Principal Cause*, is to have his *Libel*, and other pieces *Outgiven*, ready to be produced, and put into the *Clerks* Hands; As also, the *Pursuer* of the *Advocation*, who is ordinarily *Defender* in the *principal Cause*, is to have the *Letters of Advocation* in readiness, likeways to be produced; For if at *Calling* before the *Ordinary*, the *principal Libel* and other *Protests* be not produced, the *Pursuer* of the *Advocation* may produce the *Letters of Advocation*, and crave, That the *Cause* may be *Advocated*. ay and until the *Libel* and other pieces of the *principal Process* be produced, which the *Ordinary* will admit of, and this operats an *Advocation* in the mean time, but is of no great force, seing it is taken off when ever the *principal Process* is produced.

The main design thereof, being to fix the *Cause* and *Cognition* of the *Reasons of Advocation* before that *Ordinary*: Again, some *Advocats*, instead of seeking such a *Qualified Advocation*, when the *Pursuer* of the *principal Cause*, does not insist to have the *Reasons of Advocation* Tried and Debated, crave, that the *Advocation* may

be Deleted out of the Roll and Scored, which is never refused; And this obliges the other Party to Inroll of new again, when ever they intend to insist.

But if the principal party insist, and the Purchaser of the Advocation produce not the Letters: At calling the Cause, the Pursuers Procurator, craves Protestation and Remit, which is granted; And this is called a Judicial Protestation and Remit, which tho' in the stile thereof, when Extracted, is not different from the former, yet it hath a different Warrant, for as was told, the Warrant of the first, was under the Hand of the Keeper of the Minut-book: The Warrant of this, is signed by the Ordinary, who granted Protestation and Remit, which in Stile differs in nothing from the former, save only, that the true Dates whereon the Protestation is admitted, is prefixed with the Lord Ordinarie's Name, who grants the same. Then the Clerk adds further, admits Protestation and Remit, which being Subscribed by the Lord Ordinary, is a compleat Warrant for Extracting.

And by an Act of Sederunt, it is order'd, Where a judicial Protestation and Remit is admitted by the Lord Ordinary, That unless the Advocation be produced, and the Cause call'd the same Week, before the Clerk can after that, receive the Advocation, or the Party can be respon'd against that Protestation, he shall pay to the contrary Party, or to the Clerk for his behoof,

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hoof, *Ten Shilling Sterling*; And till this Sum be pay'd, the *Clerks* are Discharg'd to Write upon the *Procefs*, otherways to be liable in payment of the Double: But if the *Letters of Advocation* be not at all produc'd, with a stop from the *Ordinary*, before *Protestation* is *Extracted*, which may be done 24 Hours after the same is Read in the *Minut-book*, the *principal Cause* is brought back to the Court, from which it was *Advocated*, and the *Advocater* may be Charged to pay the *Protestation Money*, by *Letters of Horn-ing* and other *Legal Diligence*.

It both Parties *Procurators* Compear, and produce their mutual pieces: The Dispute begins towards the Discussing the *Reasons of Advocation*; In doing whereof, this order is observed, The *Pursuer* of the *principal Cause*, Repeats his *Libel*: and holds forth the whole steps of the *Procefs*, and tells what length it came before the *Inferior Court*, till the *Advocation* was produced; And then craves, the *Ordinary* would remit the *Cause*; And if the other Party make no *Answer*, the *Ordinary* pronounces an *Act and Remit*. Against which the *Raiser* of the *Advocation* will not be repon'd, nor he allow'd to propound his *Reasons of Advocation*, till the Sum of *Ten Shillings*, appointed by an *Act of Sederunt*, be pay'd by him to the contrary Party, or to the *Clerk* for his behoof, unless Application be made to the *Ordinary*, and a stop
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in Writing obtain'd within six free days, after the date of the *Act* and *Remit*; and the Clerks are Discharg'd to Write on the Process, till that Sum be pay'd, otherways to be lyable in the double. In this & all other cases, where *Acts* or *Decrets* are sought to be stop'd, the Lords have Discharg'd *Verbal stops*, and ordain all Written *stops* to be subjoin'd to a *Representation*, craving the same, and that they shall not endure or continue above a Fourth-night in time of *Session*, and if granted in time of *Vaccance*, shall not endure after the eight day of the down-fitting of the next *Session*, except the said *Stops* be renewed: If no stop be procur'd, the *Act* and *Remit*, Decerning Payment of *Fifteen pounds Scots* of *Remit Money* may be *Extracted* in it's due time: After which the *Cause* is brought back to the *Court* where it was first raised.

But if the *Advocate* repeat his *Reasons* of *Advocation*, and offer instantly to verify and prove the same, the other Party must *Answer* thereto, and either impugn the *Relevancy*, or else alledge, though the *Reasons* of *Advocation* were Relevant, yet the same are not instantly verified and proven, and so cannot be admitted: And if the matter be so, the *Ordinary* will repel the *Reasons*, either as not Relevant, or as not instantly verified, and *Remit* the *Cause* in common Form; For it is to be observed, that all *Reasons* of *Advocation* must be instantly proven: That is to say, they must

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either be a point of *common Law*, or a *Matter of Fact* notourly known, or they must be Documented by *Writes* instantly produced, or by the Oath of the *Partie*, for a *Probation* by *Witnesses* or giving *Letters of Diligence*, to recover from Extraneous Persons, *Writes* for proving these *Reasons of Advocation*, are repudiated by *Law*, and by the practice, excepting when these matters of *Fact* are proponed, and offered to be proven *peremptorie Cause*; Such as, the *Defender* denys he lives within the Jurisdiction of the *Court*, before which he was pursued, and offers to prove the same under the peril of the *principal Cause*.

There are only two *Reasons of Advocation*, namely the *Incompetency* of the *Judge*, or the *Iniquity* of his *Interloquitors* pronounced in the *Cause*.

The Grounds of *incompetency*, are upon account either of the *Pursuer*, or of the *Defender*, or by *Reason* of the Nature and Quality of the *Cause*.

The *Reasons of incompetency*, upon account of the *Pursuer*, are, That he is related to the *Judge*, within the prohibited degrees of *Consanguinitie*, or *Affinitie*, which by expresse *Law* make the *Judge* suspect, and unfit to cognosce upon *Causes* and *Actions*, appertaining to so near Kinsmen, or because the *Judge* has given *partial Counsel* to the *Pursuer* concerning the *Process*.

The Grounds of *incompetency*, upon account of the *Defender*, are, That he does not Live within the *Judges Territory*, as for Example, the *Sheriff* of *Berwick Shire* cannot Judge in *Actions* against a *Defender*, living within the *Shires* of the *Lothians*: Nevertheless, if one have resided, Forty days within a *Judges Territory*, he is subject to his *Jurisdiction*, and cannot plead this Ground of *incompetency*; In like manner, if one have Lands lying within one *Jurisdiction*, and his Dwelling-place within another, in all *Actions* concerning the said Lands, he may be called before the Judge of that *Jurisdiction*, where the Lands ly; And it is sufficient to *Summon* him at the Ground of the said Lands, and by *Letters of Suplement*, to *Cite* him Personally, or at his Dwelling-place: And also, if one be *Summoned* at the place where his Wife and Family remain for the time, it is sufficient, albeit he himself, at the date of the Execution, and long before, was in another place.

Secondly. Albeit a *Defender* Lived within the Territory, yet he may enjoy a privilege flowing from his *Person*, *Office*, or *Employment*, which frees him from the *Jurisdiction* of the Judge, such a privilege is granted to the *Members of the Colledge of Justice*, who by the Acts of Parliament, and daily practice of Scotland are Exempted from all *Inferior Jurisdictions*, and are bound only to Answer before the *Lords of Council and Session*; So as they may decline all

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inferior Judges; And the *Act of Sederunt* in the Year 1687, declares who are *Members of the Colledge of Justice*, and when they Forfeit this Priviledge.

But it is to be observed, That if the Party to whom the Objections are competent, neglect to propone the same in due time, and proceed to alledge other Defences, which imply an *Approbation* of the Judge, the *Jurisdiction* comes thereby to be *prorogated*, so that the Party is not thereafter allowed to recur, and to propone any of the foresaid grounds of personal *Incompetency*, which is otherways when the *Incompetency* is real, arising from the nature of the cause.

The third Reason of *Incompetency* flows from the Cause it self, for all Causes cannot be cognosced by all Judges, and there are *Actions* peculiar to certain Judges, wherein they have a *Privative Jurisdiction*, as the Judge *Admiral* and *Commissars of Edinburgh*, have a *Supream Jurisdiction* in certain Causes cognoscible only by themselves; And the *Lords of Session* are the only Judges competent in *Actions* relating to *Property*, *Declarators of Right*, *Reductions*, or the like.

Another Reason of *Incompetency*, proceeding from the Cause, is, where the same *Process*, or another having a near contingency to it, depends before a *Sovereign*, and more competent Judge, which is called *Lis alibi pendens*, as when a
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Process is first raised before the *Lords of Council and Session*, and is not insisted in. The *Pursuer* thereafter intents the like *Process* before an *Inferior Judge*, this last Cause may be *Advocated* to the *Lords*, because the first which is to the same purpose, is depending before them.

A 3^d Reason of *Incompetency* upon the account of the Cause it self, is, when the Judge has an Interest in it, either directly, when he may be *Lofer* or *Gainer* in the event thereof, or indirectly *quando fovet consimilem causam*.

The *Second Reason of Advocation* is drawn from the Judges iniquity committed in the *Process*, which may be done in the *Interlocutors*, determining the Relevancy of *Alledgances*, *Defences*, &c. proponed, either by *Pursuer* or *Defender*, or in the *Form of Process*, or in the manner of *Probation*.

The *Defences* are either *Dilator*, or *Peremptor*, and *Iniquity* is committed, with respect to these, when *Defences Relevant* are *Repelled*, or *Irrelevant Allegances* are *Sustained*.

The *Dilator Defences* are founded either upon the *Incompetency* of the Judge, or upon the *Informality* of the *Citation*, or upon the *Contract*, or other *Write* founded upon in the *Lybel*, as shall be fully shown hereafter.

Peremptor Defences cannot regularly be enumerated & classed, yet, they may be said to be founded upon *Prescription*, or upon *Riction*, or upon

upon Payment, or *Aquittance*, and *Discharge* of the Debts, Bond, or other Right pursued upon.

Iniquity is committed in the *Form of Process*, when that *Form* which is usually observed in the Court, is either expressly dispenced with, or tacitely laid aside.

The third sort of *Iniquity* respects the *Probation*, and is committed, when an *Allegance*, though *Relevant*, is admitted to be proven by an *Irrelevant* mean of *Probation*, as, when a *Fact*, which is the proper object of an *Oath of Verity* is referred to an *Oath of Calumny*, such are *Facta propria recentia*. 2dly. When what is probable by *Oath*, or *Writing*, is allowed to be proven by *Witnesses*, or the like.

Now these *Reasons of Advocacion* must be instantly verified and proven, which is done, either by the *Minuts of Process* and peices, which concern the same, or by the *Oath* of the Party and no otherways, for the *Oaths* of the *Members of Court*, viz. the *Judge* or *Clerk*, are not regularly admitted in *Advocations*, though they may be received towards proving *Relevant Reasons of Suspension*. If the *Reasons of Advocacion* be not sustained, either, because they are not *Relevant*, or because they are not instantly proven, the *Cause* is remitted to the *Judge*, from whom it was *Advocated*, and the *Lord Ordinary* pronounces *Interloquitor* upon the *Reasons*, and *Remits* the *Cause* by an *Act*, which

which is commonly called an *Act and Remission*, likewise ordains the procurer of the *Advocation*, to pay 15 *lib.* of Expences, (which is called *Remit Money*,) unless by the *Interloquitor*, the *Cause* be *Remitted*, without Expence, which is done, if the *Ordinary* find the *Advocate* did not *Advocate mala fide*, and that he had a probable *Cause* for so doing.

But if the *Reasons of Advocation* be found *Relevant* and *proven*, the *Cause* is either *Advocated of Consent*, or *in jure*.

The *Cause* is said to be *Advocated of Consent* when both Parties consenting instantly to dispute in the *Principal Cause*, the *Pursuer* repeats his *Lybel*, and the other Party propones his *Defences*, as was done before the *Inferior Court*, or as if the *Cause* had been originally intended before the *Lords*; And in this no *Act* is Extracted upon account of the *Advocation*, though in the *Act of Litiscontestation*, or *Decreet*, which is pronounced in the *principal Cause*, the Extract mentions that the *Cause* was first intended before an *Inferior Court*, and thereafter *Advocated* to the *Lords*.

But sometimes when the *Cause* is *Advocated of Consent*, the Parties do not instantly plead therein, for when it is intricate, or consists of many parts, the *Lords* will allow the *Defender* to see the *Process* in the *Clerks* hands, and to be ready the next *Calling*, after which the *Defender* without further delay is obliged to Answer

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ver, and many Causes are wont to be Advocated of consent, without disputing the Reasons of Advocation, which ordinarily happens when the Reasons are dubious, or when both Parties are well satisfied, that the present Ordinary, Judge the principal Cause.

The Cause is said to be Advocated *in jure*, when the Reasons are sustained, so that the Ordinary finds the Lords of Session are only Judges competent to the Action, and if the Raiser of the Advocation, will not consent to Dispute instantly in the principal Cause, the Ordinary pronounces an Act of Advocation, whereby the Cause is Advocated to the Lords, and Judged by them. This Act the Pursuer of the principal Cause Extracts, and gives out with the Lybel, and pieces of the Process, to be seen by the Defenders Procurator, and after the same is returnd, the Cause is Inrolled, in the Book of Inrolment for Ordinary Actions, as shall be declared in the Title which treats of the Form of Process in ordinary Actions.

In some Cases, albeit the Reasons are Relevant and proven, the Cause is not Advocated to the Lords, but remitted with a Qualification, as when the Debt is inconsiderable, or when the Inferior Judge is the only Judge competent in the first instance, as the Commissars in matters Ecclesiastical, such as concern Divorce or Legitimation and Confirmation of Testaments, and though Iniquity be committed, yet the Lords will

will Remit the Cause with Instructions, how to proceed, that no further Error be committed, and without *Protestation Money*.

Sometime the Cause may be *Advocated in jure*, & yet not brought before the *Lords*, nor remitted to the *Court*, before which it was intended but will be sent to another, which is alone competent in the first instance as to the subject matter, as a *Servicemay* be *Advocated* from an *Inferior Court*, and ordered to be expedite before the *Majors*; In like manner Causes *Maritime* or *Ecclesiastical*, originally intended before incompetent *Inferior Judges*, will be sent to the *High Court of Admiralty*, or to the *Commissars of Edinburgh*.

If the *Pursuer* of the *Principal Cause*, against whom *Letters of Advocation* are Expedite; Find, That the *Reasons* will be sustained, for his dispatch, he may put up a *protestation* in the *Minut-book*, to force the production of the said *Letters*, and when produced, So that he understands what *Advocat* is imployed for the raiser of the *Advocation*, he causes the *Clerk* put up in the *Minut-book*, an *Act of Advocation of consent* which so soon as read, he *Extracts*, and gives out the same, with the *Instructions* of his *Libel*, to the *Defenders Advocat*, to see; And in so doing, he saves the time, which otherways would be spent in *Out-giving*, *Returning*, & *Inrolling* the Cause in the *Roll of Advocations*, and *Discussing* the *Reasons*.

But when the *Pursuer* of the *Principal Cause*, raises

raises the *Advocation*, which frequently happens. The Lords of Session have Enacted, That if within *Fifteen* days after admitting such *Advocations* (not reckoning Vacation time) he does not insist, by causing call his *Advocation*, and giving it with the *Process* to the *Defender's Advocate* to see, immediaty thereafter, the *Defender* may put up a *Protestation* in the *Minut-book*, whereupon the *Pursuer* shall be oblig'd to produce his *Advocation* with the *Principal Process*, & an *Outgiving* thereon, otherways the *Protestation* and *Remit*, shall be given out to be *Extracted*; And when the *Advocation* is so produc'd, with the *Process* and *Outgiving*, the *Defender* before he give it back with a *Return*, may *Inroll* the *Process* in the *Roll of Advocations*: In order whereunto, the *Defenders Procurator* may keep the same six days allow'd for seing, and until the first *Saturday* thereafter, That he may get the *Process* *Inrolled* upon his own sign'd *Return*.

It is to be observed, in this case, That the *Pursuer* cannot put up an *Act of Advocation of consent*, but as said is, must call his *Letters of Advocation* as a *Summons*, and at Discussing the *Reasons*, the *Pursuer* craves, the cause may be *Advocated* and the *Defender* pleads, it ought to be *Remitted* to the *Inferior Judge*; In which *Debate* the *Pursuer* cannot alledge, *Incompetency* of the *Judge*, whom he has chosen, by *Intending* the *Action* before him, except a *Reason of Incompetency*,

tency, which was not in the beginning, has since occur'd; And the *Defender* in this case has as good reason to crave a *Remit*, as the *Pursuer* had in the Cases above-declared; So that the *Advocation*, whether obtained by the *Defender* in the *Principal Cause*, or by the *Pursuer*, is, either *Remitted* or *Advocated of consent*, or *in jure* & when *Advocated* is insisted in, as if it were an *Ordinary Action*, originally intended before the *Session*.

T I T. II.

The Form of Process in Ordinary Actions.

ALL *Ordinary Actions* before the Lords, proceed upon *Summons* under the *Signet* duely Executed, at the instance of the *Pursuer*, against a *Defender*, warning him to Compear at two Diets (for the most part) before the Lords of Session, to Answer in the Matter libelled, and to hear and see *Decreet* pronounced therein. If the *Defender* be in the Kingdom, he must be *Cited* to Compear for the first Diet upon Twenty One Days Warning, and for the Second Diet upon Six Days Warning; And if he live in the Islands of *Orkney* or *Zeetland*, which are far distant from

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from the Town of *Edinburgh*, the common Place of Justice, by Act of Parliament 1685, It's Statuted, That all *Summons* against the Inhabitants of these Islands, before the Lords of Privy Council, Lords of Session, and before the Commissioners of Justiciary, and Letters of Horning or Lawborrows upon their Decrets, or by their Warrant, shall be Executed upon Fourty Days, without Prejudice of Letters upon Writs Registred with Consent of Parties, where, by the Clause of Registration, the Party Consents that Execution shall pass on a shorter time. If the Defender be out of the Kingdom, Sixty Days are allowed for the First Diet, and Fifteen for the Second, in which Compt of Days, either that on which the *Summons* was Executed, or the Day of Compearance must be free, which is to be observed in all manner of Citations, upon how many or how few Days soever the same be, though Vacance Days are compted in these Citations, yet the Day of Compearance must be in Session.

Generally speaking, every *Summons* must have two Diets, and can have no fewer Days of Compearance than those above-mentioned, except the Libel be instantly verified and proven by Writ, in which Case, one Diet of six Days serves, or except the *Summons* be Priviledged, and such as are mentioned in the Act of Sederunt 21 of July 1672, some of which may be Executed upon Twenty one Days,

some on Fifteen, others on Six Days warning ; Or if the *Defenders* be Inhabitants of the Burgh of *Edinburgh*, or the contiguous Suburbs thereof, they may be *Summon'd* in the Second *Citation* upon Twenty Four Hours.

The *Pursuer* must wait until the Days of *Compearance*, exprest in the *Summons* be past, after

Act of Sederunt concerning privileged Summons,
July 21 1672.

THE Lords considering that diverse *Summons* as *Declarators* and others, which by the constant Form and Practice of this Kingdom, did always abide Twenty One Days warning, have of late been Executed sometimes upon Six Days, as being privileged by Deliverance of the Lords, upon Bills given in for that Effect ; And seeing these Bills being drawn and given in by Writers to the Signet, do pass of course without Perusal or Consideration thereof by the Ordinary, which hath given Occasion to the foresaid Abuse ; And finding it Expedient that it be Determined for the Future, what *Summons* shall be privileged : Therefore thesaids Lords do Ordain. That in time coming, all *Summons* shall come in upon Twenty One Days warning, and that none be privileged by the Lords Deliverance, or otherwise except these following, *viz.* Removings, Recent Spuilzies, and Recent Ejections (where the *Summons* is Executed within Fifteen Days after committing of the Deed) Intrusions, and coming in the Vice, Causes Alimentary, Exhibitions, *Summons* for making Arrested Goods furthcoming, Transferrings, Poidings of the Ground, Wakenings, Special *Declarators*, Suspensions, Preventions, and Transumps ; And that Recent Spuilzies, Ejections, Intrusions, and succeeding in the Vice, be Executed upon Fifteen Days, and that all the rest of the foresaids *Summons* be Executed upon Six Days. And it is further Declared, That all the *Summons* above-mentioned shall be Privileged as aforesaid, whether the *Summons* bear a Privilege or not ; And the Lords do hereby Prohibit and Discharge the Writers to the Signet to writ, Form, or present to the Clerks to be put in, any Bills for privileging any *Summons* but these above-exprest, Certifying such as shall Contraveen, that for the first Fault they shall be Fined in one Hundred Merks *Scots*. to be applyed for the use of the Poor ; And for the second Fault they shall be deprived of their Office. It is likewise hereby Declared, That this Act is not to be extended to *Summons* Executed against Persons Inhabitants of the Burgh of *Edinburgh*, or the contiguous Suburbs thereof, who may be Summoned by the second Citation upon Twenty Four Hours, conform to the Custom formerly observed.

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after which he delivers the same with the Executions to an Under-Clerk of the Session, to be called in the Outter-House upon any Court Day within the Year after the last day of *Compearance*, according to a Note on the Margin at the beginning of the *Summons*, which mentions the Name of the *Pursuers Advocat*, the Name of the *Pursuer* himself, and of the *Defender*, Thus, Call per S. A. contra B. for if the *Summons* be not called within Year and Day of the 2d. Diet, the *Defender* is not obliged to Answer till he be of new Cited, which is done by a *Summons* of Wakening; and if the *Summons* was not Executed within the Year and Day after it's Date, it prescribes.

All *Summons* before the Lords are with Continuation of Days, and are not *Peremptor*, i. e. the *Defender* is not bound precisely to Answer on the Day to which he was Cited, neither need he compear in Person, as behov'd to be done before the Lords of Privy Council, and must be done before the Lords of Justiciary, but the Diet is continued against him, and he is allowed a Hearing by his *Advocat*, at any time before Sentence be Extracted.

After the Session Bell, which Rings betwixt Eight and Nine in the Morning, the Under-Clerks come to their own Table in the Outter-House, and each of them by Turns Read and Call, conform to the fore-mentioned Note, the Names of the Parties, which with a more

Audible Voice is repeated by a Macer, to the end the *Advocates* and their Servants who ought there to be present, may hear the *Defenders* Name, and the *Advocate* whose Client he is, or to whom the Copy of the *Summons* is sent, may Answer, and if no *Advocate* appears for the *Defender*, the Clerk under the above-written *Note*, writes, 10 June 1709, (which is the date of the Calling) *Actor* S. *Alter* Absent, 20 the next Weeks Roll, after which, conform to the Regulations 1695, the *Pursuer* causes inroll the *Summons* in the next Weeks Roll, in the same way as if it had been duly returned, in manner hereafter Declared, to the effect he may get *Act* or *Decreet*, and if, at calling of the *Cause* by course of the Roll, none compear for the *Defender*, the *Judge Ordinary* pronounces an *Act*, or *Decerns* in absence, and signs the Sentence, which in due time may be *Extracted*, and this *Decreet* will be Effectual, if the *Defender* be personally Apprehended, and the Libel referred to his Oath; For by *None-compearance* he will be holden as *Confessing*, the *Decreet* will be valid also, tho the *Defender* be not personally Apprehended, if the Libel be instantly verified by Writes libelled on, but if the *Pursuer* does not think fit to make use of, or wants, these means of Probation, he may offer to prove his Libel by Witnesses, or by Writs in the Hands of other Persons, and get Warrant for a Diligence in the

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the same way as if the *Defender* were Compearing and Disputing.

But if either at *Calling* by the Clerk, after the *Session Bell*, or before the Ordinary by the Roll, an *Advocat* compears, and craves to be *Marked* for the *Defender*, and to see the *Process*; The Clerk in the first Case, and Judge in the second, will allow him to see it, and the Clerk Marks on the Margin under the foresaid Note or Roll for the *Calling*, 10 June 1709, *Actor S. Alter T. to see*, and this Marking by the Clerks, as well when the *Party* is absent, as when he is present, is said to be a *Calling* and *Marking* thereof; And if there be many *Advocats* for the *Defender*, or many *Defenders* who have different *Advocats*, their Names are *Marked*, and the *Process* ordained to be seen in the Hands of the Eldest *Advocat*, or of him who compears for the greatest Number of *Defenders*, to whom it is recommended, that he acquaint the rest, which is likewise *Marked* with the *Calling*.

It is to be observed, that at the first *Calling* by the Clerk, it is not usual to have an *Ordinary* present, and that if an *Advocat's* *Servant* Compear, he may crave to have his Master *Marked* as the *Defender's* *Advocat*, and to see the *Summons*, and the Clerk will Mark that *Advocat's* Name: The *Defender's* being *Denounced* and *Registred* to the Horn, or his absence out of the Kingdom, tho his *Advocat* want a
Pro.

Proxy, will not debar him to see the *Process*.

This *Calling* hinders the *Summons* from prescribing, and makes the same endure for Year and Day longer: But if the *Cause* be not prosecuted in that time, the *Action* must be of new *Wakened* against the *Defender*; However to stop this Prescription, the *Pursuer* uses to call the *Summons* over again, within the Year and Day; And so forth continues the same from Year to Year, which has been done for several Years; And these after *Callings*, and the *Clerks Marking* thereof on the Margin of the *Summons*, are call'd a *Partibus* from the Words, that are made use of in the *Marking*, which is thus, 14 June 1709, *Partibus ut supra*, to see.

After the *Calling* by the *Clerk*, the *Pursuer's Procurator* Writs an *Outgiving* upon the back part of the *Summons*, Thus, 14 June 1709, Given out to T: to see this *Summons*, and one Execution by me S. and so signs it. And if the *Pursuer's Title* be a *Bond*, or *Disposition* or any other *Writ* one or more, the same ought to be given out, and mention'd in the *Outgiving*, and this is call'd the *Process*, and the different pieces thereof, which without any Receipt are deliver'd to the *Defender's Advocat*, or to his chief *Servant*, who is allow'd to keep the same six days, after which, he restores the *Process* with a *Return*, Thus 21 June 1709. Seen and Return'd by me T.

Where

Where *Processses* are kept up unreturn'd by the *Defender's Advocat*, longer than the time allow'd. It is Statuted by the *Regulations* 1672, That upon Complaint to the *Lords*, the *Ordinary* on the *Bills* shall call the *Advocat* and fine him in 7 *lib. Scots*, for ilk day he has kept the *Process*, after it was required Personally or at his Chamber, by way of *Nottars Instrument*, until the day of the *Complaint*, and in 6 *lib.* for every day the *Process* shall be detain'd after *Complaint*, and one of the *Macers* are ordain'd to exact the Fine, under Deprivation, and Warranted to exclude the *Advocat* out of the *House*, till he make payment to the *Ordinary* on the *Bills*, whereof the one part goes to the Poor's Box, and the other to the *Pursuer* if he desire, otherways the whole is put into the Box; And when many *Defenders* are call'd, and for them several *Advocats* Compear, the *Advocat*, who for the *Party* Principally concern'd, taketh up the *Process* to see, (and in whose hands it is appointed to be seen by the other *Advocates*,) shall be allow'd for seing thereof, only four days; In which time if he do not return the *Process*, he incurs the *Penalties* above mention'd; And the *Process* when return'd, shall in the *Clerks* Hands remain six days before it be call'd: In which time any Compear ing for the other *Defenders* may see the *Process*, and upon it *Write* and *Subscribe* for whom he Compears, And upou an *Amand*, may for

24 Hours Borrow the *Procefs* from the Clerk and in case he do not in the time foresaid Return produce the *Procefs*, the like Execution is to be us'd therefore, as in the former Case. Likewise if any *Advocat* in the said space of six days be desirous to see the *Procefs*, for a *Party* having *Interest*, but not call'd, upon production of the *Partie's Interest* in the Clerks Hands, he will be allow'd to see in manner foresaid; and if the *Advocat* neglect to see in manner above written, he shall not be heard when the Cause is call'd, whether he Compear for a *Party* call'd, or for his *Interest*. But for getting *Proceffes* return'd in due time, the present Practise is, That upon a Complaint presented to the Ordinary on the Bills by the Pursuers *Advocat*, the *Advocats* *Servant* to whom the *Procefs* was given, may be ordered by the same Ordinary to be Imprisoned, which is put in Execution by a *Macer*; And the *Party* Complained upon is apprehended and Imprisoned, till the *Procefs* be returned of it's due Date, and the *Macer* gets an half Dollar from the *Party* against whom the *Caption* is put in Execution, and may detain him till he be payed thereof.

These *Outgivings* and *Returns* are sign'd by the *Advocates* themselves, for the *Lords* have declar'd, That if the *Servant* of any *Advocat* shall presume to adhibite in Write his Masters Subscription to a *Petition*, or to the *Outgiving* or *Return* of a *Procefs*, they shall be proceeded against and Punished as *Falsifiers* and *Forgers* of *Writs*.

Tho

Tho the *Outgiving* bear, That the *Procefs* is given to an *Advocat*, yet the *Caption* for not returning, is againſt his *Servant*; Becauſe generally *Proceſſes* are deliver'd to the *Advocats* chief *Servants*, for whom it may be thought the *Maſter* is *Answerable*. And it has been known that upon *Complaint* by the *Advocat*, whoſe *Servant* was under this kind of *Caption*, for not returning a *Proceſs*, the *Ordinary* granted *Warrant* for Apprehending the *Agent*, to whom the *Advocat's* *Servant* gave the *Proceſs*, and till it was produc'd both were kept in *Cuſtody*.

The *Summons* being return'd, the *Purſuer's* *Advocat* or his *Servant*, on a *Saturday* thereafter, carries it to the *Keeper* of the *Book* of *Inrolment*, for the *Outer-houſe*, who places it in the *Roll* of *Ordinary Actions*, among the *Causes* *Inrolled* that day, according to the date of the *Return*, in manner Preſcrib'd in the *Act* of *Regulations* 1672, the *Keeper* of the *Rolls* being for this end oblig'd to attend in the *Session Houſe* every *Saturday* Afternoon from 2 to 4 a *Clock*.

When the *Cauſe* is call'd before the *Ordinary*, according to the courſe of the *Roll*, the *Purſuer's* *Procurator* repeats his *Libel*, and, if *None* compear, he may get a *Decreet*, which nevertheleſs is in abſence, tho the *Proceſs* was Return'd by an *Advocat*.

It happens ſometimes that the *Defender's* *Advocat* compears, and the *Purſuer* is abſent; In which *Cafe*, the *Defender's* *Procurator* may
Crave

Crave that the *Summons* be Deleted and Scored out of the *Roll*, which makes that *Inrolment* void; But this is not Secure, for the *Pursuer* may of new Inroll the *Cause*, and sometimes he lets this *Inrolment* fall of Design, to bring it in before another *Ordinary*; and in order thereto, he causes make two or more *Inrolments* of the same *Cause*, but this fraudulent Practice will have no Effect, if the *Defenders Advocat* found his Exception upon the *Act of Sederunt* 8 November 1695, whereby the Keepers of the *Rolls* both of the *Inner* and *Outter-House* are prohibited to Inroll any *Cause* in any *Weeks Roll*, but once, and are appointed to Mark the first *Inrolment* upon the Back of the *Process* for his greater Security: And the Lords have declar'd, That the Scoring of any *Cause* out of a *Roll*, shall have the same Effect as if they were Scor'd out of all other *Weeks Rolls*, Inhibiting strictly the *Keepers of the Rolls* of both *Inner* and *Outter-House* to Inroll *de Novo* the *Causes* so Scored, except in *Course* as they shall be given up, and that after all the *Causes*, that were Inroll'd before the same, and it is competent to the *Defender* and any other of the *Leiges* to Object against *Processes* otherwise Inroll'd. But in case the *Pursuer* do not insist upon the first *Inrolment*, it were better for the *Defender* to crave a *Protestation* against him for not insisting, which will be granted without any other *Solemnity* than the Demand-

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ing thereof at *Calling the Cause*. *Protestation* is a judicial *Act* given the *Defender*, when the *Pursuer* does not insist, whereby the Judge *Affoizies* the *Defender* from that *instance*, and declares that he is not obliged to Answer until he be *Summon'd* of new, and the *Protestation* Money paid; And this is introduc'd, that the *Defender* may not be forc'd to an uncertain *Attendance* at the *Pursuer's* pleasure: Now, this *Protestation* against *Pursuers* in *Ordinary Actions*, is of two sorts, namely, it may be sought immediately after the Days of *Compearance* are past, and that by *Production* of a Copy of the *Summons*; And next it is granted if the *Pursuer* be absent when the *Cause* is call'd by course of the *Roll*, in the same way as has been said in the case of *Advocations*: And this last, which is call'd a *Judicial Protestation*, may be sought in every Step of the *Process*, when the *Pursuer* does not insist.

If both Parties *Compear*, the *Advocat* for the *Defender* holds forth his *Defences* by proposing an *Exception*, which is an *Answer* to the *Libel*, and what is said by the *Pursuer* against this *Exception*, is call'd a *Reply*, and what the *Defender* Returns to the *Reply*, is call'd a *Duply*, and so furth the *Defender* and *Pursuer* make Answers to one another, which are termed *Triplys*, *Quadruplys*, *Quintuplys*, &c. but so as the *Defender* is always allowed to be the last Speaker. }

A *Defence* is either *Dilator* or *Peremptory*. A *Dilator* delays and defers^t the *Action*, but does not take the same away; A *peremptory Exception* extinguishes the *Action*, and operates as a perpetual *Absolvitor* in favour of the *Defender*. *Dilator Defences* are divided into *Declinators* and *Declinators* specially so called.

In proponing *Defences*, this Order in General ought to be observ'd, That the *Dilators* should be proponed before the *Peremptors*, for after the *Defender* has propon'd a *Peremptor*, he will not be allow'd to propone a *Dilator*, and among the *Dilator Exceptions*, that which is *Declinator* of the Judge, should be first Alleged, for if the *Defender* should propone any other *Dilator*, and Crave the Judge's *Answer* thereupon, he will not be allow'd thereafter to decline the Judge, *Quia primus actus iudicii est iudicis Approbatorius*, but if the *Cause* be call'd by Anticipation out of its due Place in the Roll, the *Pursuers Advocat* may refuse to Insist, or the *Defenders Advocat*, to Answer; And the *Clerks* are prohibited to Write upon any such *Process*, or to Extract any *Act* or *Decree* thereon.

The common *Declinator* is *Incompetency*, the Grounds whereof are set down in the Title, which Treats of *The Form of Process in Advocations*, only in this Place it is to be observ'd, That the Lords of Session, being the *Supreme Judges* in all Civil Matters, their *Jurisdiction*

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is Universal over the whole Kingdom, and yet there are several Causes whereof they are not Judges Competent in the first Instance. As Cases *consistorial*, which must be pursued before the Commissars, Judges in the *Ecclesiastick Court*, and Causes *Maritim*, Cognoscible only by the Judge of the Admiralty, and Criminal *Process*, which belong to the Jurisdiction of the Justiciary: As also by the Act of Parliament 1672, concerning the *Regulations* of Judicatories, all Causes for 200 Merks, or of less Importance, must in the first instance be carried on before inferior Judges, and no *Summons* for such Causes must be raised before the Lords, except in *Singular Cases* mentioned in the *Act*: Nevertheless, the Lords doe pass Bills of *Advocation* from the Commissars upon pregnant *Reasons* of *Iniquity*, when instructed, and though they do not *Advocat* the Cause to themselves, yet they will *Remit* it with instructions and Directions to the Judge how to proceed. And likewise, albeit the Cause be within 200 Merks, yet if the *Defenders* live in several *Jurisdictions*, the Lords will sustain the *Process*; And Causes belonging to the *Members*, of the Colledge of Justice are excepted: As also Actions for Sums, though under 200 Merks due to Merchants, Cooks, Vintners and others within Burgh, for Furnitur taken off from them, by Persons living without their Shire.

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The Lords of *Session* are not *Judges Competent* to the serving of *Briefes* taken forth of the *Chancery*, though they cognosce upon *Advocations* of these *Briefes*; And when the *Reasons* of *Advocation* are sustain'd, they *Advocate* the *Cause* to their own *Macers*, who are the *Supreme Judges* to all *Briefes*; And if the *Cause* be intricate, they will either ordain the *Briefes* to be serv'd in their own presence, that they may be at Hand to direct the *Macers*; or otherwise they will join some of their own Number, as *Assessors* to Sit with the *Macers*. And tho the Lords of *Session* are not *Judges Competent* in *Riots* and *Crimes*, yet they will cognosce on wrongs done to their own *Members*, or by them, in matters relating to their *Employment*; and likeways in *Contempts* done to their own *Authority*, and punish the *Delinquents*, by *Fine*, *Imprisonment*, or other *Arbitrary Punishment*. And tho in the *Cases* abovemention'd, the Lords of *Session* be not *Judges Competent* in the first instance, yet they may *Judge* them in the second, by cognoscing upon the *Decrets* pronounc'd by these *Judges*, in *Suspensions* and *Reauctions* thereof, to which the Lords are only *Judges Competent*: But they do not *Suspend* or *Reduce Decrets* of the *Justiciary*, tho they did both, with respect to *Decrets* of the *Privy Council*, pronounc'd in Matters of *Civil Rights*, as *Aliments* & the like; concerning which *Competitions* fall out before the *Session*.

If the *Declinator* be *Personal* against the Judge, and sustain'd; the next *Ordinary* in course, who is the *Ordinary* on the *Bills*, is called out to Judge that particular *Cause*, and, when it is over, he returns to the *Inner-house*: But where there is ground for such *Exceptions*, the *Ordinary* generally does decline himself, which takes off all occasion of *Dispute* on that Head. The *Declimators* being discuss'd (or where there is no occasion for them) the other *Dilators* are to be propon'd in this order, First against the *Form of Process*, as that there are more *Defenders* than six, contrary to the 21 Article of the *Regulations* 1695, or that the *Summons* has not been legally called or inrolled, or that it is not *Tabulated*, or that the *Defender* has not been legally *Summoned*. The not *Tabulating* the *Summons* delays till next calling, before which the *Summons* may be duly *Tabulated*. As to all which it is to be notic'd, That the *Pursuer* must procure his *Cause* to be call'd within that Week, for unless *Decreet* or *Act* be put up in the *Minut-book*, or *Avissandum* made, or some *Interloquitor* pronounc'd by that *Ordinary*, the *Cause* or *Action* will not be fixt before him: And the *Pursuer* by this negligence, will lose the benefit of that *Inrolment*, and be forc'd to *Inrol* of new again, except the *Ordinary* mark a *Continuation* of the *Cause*, and grant *Warrant* for *Inrolling* thereof in the next weeks *Roll*, which is only done in *Competitions*,

tition and some other Cases mention'd in the *Regulations* 1672.

As to *Inrolment*, there is another *Dilator* when there are many *Defenders* in one *Summons*, a *Roll* of their Names must be put upon the *Outer-house* Wall, that their *Procurators* may be certiorated when their *Clients* are called, and to be ready : This should be put up with the *Roll* of that Week in which the Cause is to be called, and must be two Days on the Wall, before the *Defenders* be obliged to Answer : Nevertheless, this is not needful (in all Causes where many *Defenders* are call'd as) in *Summons* of Mails and Duties, in *Pointings* of the Ground against Tenents, or where the Cause is against many Persons joined in one Relation, as are Members of Societies, Incorporations, and other Collective Bodies, or Creditors of one Debitor, who may be generally designed as Tenents of particular Lands, Baronies, Lordships, Earldomes, or Tenents to such a Master in such a Parish or Sheriffdom, or the like.

If the *Dilator* take effect, so as the Cause cannot be called for that Week, the *Pursuer's* *Procurators* ought to Crave, that it be continued in the next Week's *Roll*, and to see the same *Inrolled* accordingly.

There are some Causes, which after they are seen and returned, need not byde the Course of the *Roll*, such as the King's Causes, which may be call'd upon either of the two next *Sede-*

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rant Days, after the *Process* is returned, failzie-
ing of which, there must be Fifteen Days Ad-
vertisement given to the *Defender's Advocat*,
that they may acquaint their *Clients* to be pre-
sent. Causes pursu'd at the instance of the
King's Donator, have not this Privilege.
Actions of Bonorums, Transferrings, and Sales,
are called by way of Act, the first Act Day
after they are seen and returned; And Actions
of Aliment, or concerning Fines and Forfaultures,
Rescinded by Acts of Parliament since the Revo-
lution, and for Ministers Stipends, School-masters
Fees, College Rents, and also Sales (when the
Pursuer insists to force the Creditors to produce
their Interests, and to depone upon the verity of
their Debts, in order to be Ranked) may be *In-*
rolled in the *Roll* of the Week immediatly fol-
lowing, their being seen and returned, which is
called *The Regulation Roll*.

If the Exceptions be against the *Summons*,
as against the Form and Stile of the Libelling,
and the like, which are not *in substantialibus*;
The *Pursuer* is at the Bar allowed to mend
the same, and when such Amendments are
made, the *Defender* is not bound instantly to
Answer the *Summons*, but upon craving a
sight of the *Process* of new, will be allowed to
see the same in the Clerk's hands, and ordain'd
to be ready at next Calling.

The next *Dilator* is against the *Pursuer's*
Person *quod non habet personam standi in judicio*,

because he is *Minor Indefensus*, and the Process raised without Concourse of a Tutor or Curator ; In which Case, the Ordinary will name the *Procurator* at the Bar, or any other Person condescended on, to be Curator *ad hanc litem*, and upon Acceptance, Authorise them to concur in the *Process* ; upon which the *Defender* will be compelled to Answer the Libel. Another *Dilator Defence* arising from the state of the *Pursuer's* Person, is, that he stands Denunc'd at the head Burgh of the Sherifffdome, Stewartrie, or Regality wherein he lives, and and Registred at the Horn, and therefore is Debarr'd *ab agendo* : This *Defence* must be instantly verified, by producing the Letters of Horning and Execution Registred, which the *Pursuer* will be allowed to see, and to object against the Validity thereof; and if he be legally Denunced and Registred, as said is, the *Pursuer* must Relax himself in common Form, and Letters of Relaxation are expedite, either by themselves, to the effect only that the Party may have *personam standi in judicio*, or the Clause of *Relaxation* is adjected to Letters of *Suspension*, and expedite therewith. Denunciation to the Horn as above, and Registred, will debar the *Defender* from proponing his *Defences*, as well as it does hinder the *Pursuer* to insist in the *Process*, which is obviated by this *Pursuer's* assigning the *Process*, and insisting in the Assigney's Name. But Denunciation at the Mercat Cross of Edinburgh, when the *Pursuer* or *Defender*

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Defender does not reside within the Shire, does not
 top either Party *ab agendo*.

The next Exception *Dilator*, is against the
Pursuer's Title, and is *contra litis ingressum*,
 whereby the *Defender* alledges, that there is
 not a sufficient Title produced, or that the
 Titles Libelled upon, have not been seen, and
 many others, according to the Nature of the
Summons and Action.

When the *Defender* propones a *Dilator*, and gets
 the Ordinary's *Interlocutor* thereupon, repelling
 the same; if he thereafter alledge upon more
Dilators, the *Pursuer* may urge him to propone
 at once all the *Dilators* he has in that Cause.

All *Dilators* should be instantly verified,
 and no Term assigned for proving thereof, ex-
 cept they be proponed as *Peremptors*, *i. e.* That
 the *Defender* ventures the Event of the Cause
 upon the Verity thereof, and both Parties
 Consent that they may have the Effect of *Per-*
emptors, which in the Stile of the Court is, a
Dilator peremptoria Cause.

After the *Dilators* are discuss'd, the *Defender*
 takes himself to his *Peremptor Defences*, if he has
 any, and propones against the Libel, by alledg-
 ing, It is not *Relevant*, or it is not *Instructed*,
 or that the *Titles* and *Instructions* are *Null*,
 through their being *Informal* or *Prescrib'd*, or
Discharg'd, &c. Or that the *Titles* founded
 upon, cannot in Law produce the *Action* and
Conclusion libelled, and many others, according
 to the Nature of the *Summons and Action*,
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when all these fail, the *Defender* may propound *Falshood*, and offer to prove the same, but this ought to be the last *Exception* against the *Title*, *Quia exceptio falsi est omnium ultima*, of which more is said hereafter. If the *Defender* think the *Process* Groundless, he may seek the *Pursuer's* Oath of Calumny, If or not he has just reason to pursue this *Action*. As likewise, if the *Defence* be Groundless, the *Pursuer* may crave the *Defender's* Oath of Calumny, if he has just reason to alledge this *Defence*, for this Oath is introduc'd to stop Malicious pleading, and Vexation of Parties, whereby the *Pursuer* Swears that he believes he has just cause to pursue his *Summons* as it is libelled, and the *Defender* Swears that he believes he has just Reason to propound his *Exception*, the Oath of Calumny not being *Juramentum veritatis & scientie*, sed *Credulitatis tantum*; And if the *Pursuer* or *Defender* be present at the Bar, either of them may be Commanded, at the desire of the other, instantly to give his Oath of Calumny, and if he be not present, the other Party will get Diligence to Cite him to compear to give his Oath under Certification, if he compear not, he should be holden as Confest. This Diligence should be Executed by a Messenger at Arms against the Party personally apprehended; Not only the Parties, but also their *Procurators*, may be compelled to Swear *de calumnia in animam Clientis*, namely, That he has just reason to pursue the *Libel*, or propound the

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Exception, according to the Information given to him by his Client, and that he thinks the Information true. This Oath of Calumny may be craved of the Party or his Procurator, in any part of the *Process* before pronouncing of the Decreet, tho' generally it is sought *in initio litis*.

And becaule *Oaths of Calumny*, which should be clear and distinct, are sometimes required in Terms Ambiguous; Therefore, *The Lords have ordained such Oaths to be in these Terms*, That in case any Party require an Oath of Calumny, upon any Alledgance proponed and found Relevant for him, that he may require the Party against whom the same is to be proven, to Depone *whether he does not know the same to be true, so that he should put the proposer to the necessity to prove the same*; And if the Party against whom any Point or Alledgance is to be proven, require the Oath of Calumny of the Party proponing the same, the Terms shall be, That he may enquire, *Whether he knows the thing that he propones is not true, so that it were Calumnious for him to insist therein*; And it is declared, That a Party is not holden to give an Oath of Calumny *in facto proprio & recenti*, seeing, upon the Matter, the same resolves into an Oath of Verity.

The Oath of Calumny being given or past from, the Defender proceeds to propone his peremptor Defences, according to the Nature of the Action and Circumstances of his Case, and the Pursuer Replies, thereto, and so forth; which

which Libel, Exceptions, Replys, Duplys, &c. are by the Judge *Ordinary*, either sustained as Relevant, or Repelled; if sustained a Term will be assigned for proving, *First*, as to the *Pursuer* for proving his Libel, if the *Exception* be repelled simply, or for proving the Libel and Reply, if the *Exception* be not repelled simply, but in respect of the Reply. Or *Secondly*, a Term will be assigned to the *Defender* for proving his *Exception*, if the same be admitted, the Libel not being denied: Or *Thirdly*, A Term will be assigned both to *Pursuer* and *Defender*, *viz.* To the *Pursuer* to prove his Libel and his Reply, in respect whereof, an *Exception* proponed by the *Defender* was repelled, and to the *Defender* to prove his Duply and other *Defences*, which were sustained and admitted to *Probation*. This determining of the *Relevancy* of the *Libel* and *Defences*, and assigning a Term for proving thereof, is called *Liticontestation parte comparente*, and in this Interlocutor it is defined what manner of *Probation* is to be made use of; upon all which a Writ is extracted, called *An Act of Liticontestation*; after which, neither of the Parties will be allowed to propone any new thing, except it be instantly verified, or *de novo emergens vel nuper veniens ad notitiam*, which the Party should by pregnant Documents make appear to the Judge to be so, or give his Oath thereupon, otherways such *Defences* will be repelled as Competent and Omitted; so that after Decree on this *Act*, the Party

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s, &c. who has omitted to make the *Alledgance*, can never be Redress'd.

Tho' regularly no Person be obliged to *Compear*, unless they be cited under a *Certification*, yet it frequently happens, that all Parties having interest in the *Cause*, are not called, but when they get notice of the *Action*, which may concern their Goods or Rights, if they please they may *compear* and oppose the *Pursuer's Action*, but are not allowed to propone any thing, or to stop the *Process*, except they instantly verify that they have an Interest in the *Cause*, and produce their Rights in the *Clerks* hands, which the *Pursuer* must see, and both Parties will be ordained to be ready next *Calling* to answer one another, and this is called a *Compearance incidenter*, or a *Compearance for one's Interest*.

If a Party be called in the principal *Action*, and propone a *Defence* founded upon any Writ, he may *Litis contest* the *Cause* upon the *Alledgance*, and take a Day to produce the Writ he founds on, but if he thinks fit, he may produce it instantly, and plead thereupon; In which Case, the other Party is not oblig'd to Answer any *Alledgance* deduced from the Writ newly produced, till he see the same, and the *Ordinary* will allow him to see it in the *Clerk's* hands, and ordain all Parties to be ready at next *Calling*, which occasions no small delay in the Administration of Justice, to obviate which Inconveniency, By the Act concerning the Regulations in the Year 1672, It is ordained

ed, when the *Defender's Advocat* is to found any *Defence* upon *Writs*, That at returning the *Process*, he produce therewith these *Writes*, and give in the *Defences* which he deduces from them, and mark the *Clause* therein, otherwise no respect is to be had to the *Alledgance*, which *Writs* the *Pursuer's Advocat* is bound to give back within 24 Hours after, otherwise Complaint may be made against him, as against the *Defender's Advocat* for keeping up of *Processes*; and if any other *Writs* come to their hands after returning the *Process*, they should produce the same before calling the *Cause*, under the like *Certification*; but this has been for some time in *desuetude*.

The *Defender's* Answers and the *Replis* being obvious and *triti juris*, whereupon *Interlocutors* in former Cases have frequently been given, and which are regulated by the *Practick*, the Lord Ordinary pronounces the usual *Interlocator*, or such as both Parties acquiesce in, and are content the *Cause* be *Litis contestada* thereupon; but if these Exceptions and Answers be in *apicibus juris*, the Ordinary does not immediatly pronounce *Interlocutors* thereupon, but declares he will take the *Debate* to his own serious Consideration at more leasure, and this is called *Avisandum to the Lord himself*, which the Clerk accordingly marks underneath the Debate; Pursuant to which *Avisandum*, the Ordinary having considered the *Pleadings* upon both sides, either pronounces his

own *Interlocutor*, or by reason of the Difficulty of the *Cause*, declares he will take the Opinion of the Lords, and *Advise* with them concerning the same.

If both Parties be content with the Lord *Ordinarie's* own *Interlocutor*, the Debate is at an end, and the *Cause* comes to be *Litis conteste*d; but if neither of them be satisfied therewith, either in whole or in part, they crave to be further heard by the *Ordinarie*; In which Hearing, they either illustrate their former Arguments, or propone new one's, upon Consideration whereof, with the Answer made thereto by the other Party, the *Ordinary* either adheres to his former *Interlocutor*, notwithstanding of what is newly proponed, or in respect thereof alters the same: But still, if either party be dissatisfied, and conceive himself prejudged by these *Interlocutors*, he craves that the *Ordinary* would Report the *Cause* to the *Inner-house*, and obtain the Opinion of the whole Lords upon the Debate, which in the Language of the Court is called *A craving of the Lords Answer*. This Request is either granted by the Lord *Ordinar* voluntarily, and then the Clerk writes underneath the Minutes, *Avifandum to the Lords*; Which Minutes being concerted by both Parties, at least shown to them, are signed by the *Ordinarie*: Or, in case he refuse to give the Lords Answer, the Party who seeks the same offers an *Amand*, which if the Judge accepts, the *Cause* goes to Report, and

in all these Cases he Intimates upon what Day he will Report the Cause, and both Parties are desired to have their Informations ready betwixt and that time.

For avoiding many Inconveniencies arising from the large and unnecessary Congestion of Narratives and Matters of Fact in Informations, The Lords have declared, that they will take no Notice of, nor give any Answer to Matters of Fact, except such as are distinctly proposed, as either instructed by particular *Writs* produced, and the Articles thereof Marked upon the Margin, and forelated, or which bear, That the *Defenders* offer to prove their *Alledgances*, which they propose to be proven, and that in either Case they set down the said *Alledgance* instructed, or to be proven in larger Characters, that they may receive distincter Answers, and that every *Alledgance* bear the Point for, or against which it is proposed, and the Lords prohibit any thing to be insert in the Information, but in relation to the Points contained in the *Minutes* of Dispute, and that the *Informations* keep the same Order in the *Answers* to *Alledgances*, in which the *Alledgances* are set down in the *Minutes*.

The Lord Ordinary having condescended to Report the Cause either voluntarily, or upon consigning an *Amand*, he orders the Clerk to bring him the whole *Process* a Day or two before that assigned for the Report, to the effect he may look over all the *Writs* which relate
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to the Points in Dispute, and be able to narrate distinctly and deduce the *Cause* and *Pleading* thereupon; The Night preceeding the Day of the Report, both Parties deliver to each of the Lords, their *Informations* concerning the Points to be Reported.

When the *Cause* is reported by the *Ordinar*, and the Matter of Fact and Pleading sufficiently understood, the Lords *Reason* upon the Matter among themselves, and pronounce their *Interlocutor*; but if the Fact be intricate, or if the Pleading contain profound Points of Law, which require more serious Consideration, or if the Case be new, then the Lords declare they will hear both Parties in their own presence upon a certain Day then assign'd, and sometimes they ordain the *Cause* to be *Inrolled* in the *Inner-house* Roll of ordinary Actions; which *Interlocutor* or *Hearing in presence*, the *Lord Ordinary* coming to the *Outer-house-Bar*, does intimat to the *Procurators* of Parties.

The word *Amand* is *French*, signifying a *Mulct* or *Fine*, and for the most part is made use of with us to signify a *Pecuniary Fine*, as in the present Case, which the Party who seeks the Lords Answer groundlessly is to pay *per modum pene*, to discourage Calumnious *Processes*. This *Mulct* is a Dollar, which the Party instantly delivers to the *Clerk* of the *Process*, who rolls it up in a piece of Paper, and writs thereon what *Cause* it belongs to, and

and by whom given, and then delivers it to the *Ordinary*, who at reporting the *Cause*, produces the same at the *Inner-house Table*; And if the Lords in the *Inner-house* repell the *Allegation* of the Party who sought *Report*, the *Dollar* is Forfaulted for the use of the Poor, into whose Box it is put presently; but if they alter the *Interlocutor* in any sort, or think the *Cause* deserves further Hearing, the *Amand* is deliver'd back to the Party, for they find he had Reason to require the Lords Answer.

When the *Ordinary* refuses to Report the *Cause*, even upon *Amand*, the Party craves leave to present a *Petition* to the whole Lords, for no *Bill* can be presented to the Lords for stopping any *Act* or *Decree*, or rectifying any *Interlocutor* past in the *Outer-house*, until the Party first apply to the *Ordinary*, and if he refuse to hear any *New Matter*, or to *Report*, at least upon consigning an *Amand*, the Party may then give in a *Bill* to the Lords, narrating the substance of the *Debate* and *Interlocutor*, and expressing his *Application* to the *Ordinary*, his refusal to *Hear* or *Report* the special Point in Question, and that he offered an *Amand* for the Lords *Answer*, and was refused, and therefore craves that the Lords would consider what is represented, rectify the *Interlocutor*, or in case of difficulty, allow a *New Hearing* in their own presence. These *Bills* must distinctly represent the *Matter of Fact* and the

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Grounds of Complaint, as is ordain'd in *Informations*, in place of which they come in this Case, and because the *Interlocutors* which are craved to be Alter'd, may be Mitrepresented with the *State of the Process*: Therefore the Lords have declar'd, they will admit of no such *Bills*, without producing with the *Bill*, the *Process*, or at least the Copy of the last *Interlocutor* under the hands of the *Clerk*, or *Servants* who wrote thereupon. Likeas, the Lords ordain the *Clerk* of the *Outer-house* to give Copies of *Interlocutors* to Parties who shall demand the same, within 24 Hours after the *Interlocutor* is signed by the *Ordinary*, as they will be Answerable.

These *Reclamatory Bills* are for the most part ordain'd to be *Seen* and *Answer'd* by the other Party, and upon Consideration of the *Bill* and *Answer*, the Lords either adhere to the *Ordinarie's Interlocutor*, or alter it, or recommend to the *Ordinary* to hear Parties of new again, or appoint a *Hearing* in their own presence.

Besides this, Parties may have other occasions of seeking Redress from the Lords, as when the *Ordinary* has pronounc'd and sign'd *Warrant* for *Act* or *Decreet*, and the Party concern'd has not applyed to him for Rectification thereof, till the Six Days appointed by Act of *Sederunt* were elapsed, for which the *Ordinary* pretends he cannot hear him. In this Case the Party applys to the Lords by *Bill*, for re-
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commending him to the Ordinary to hear what he has to say, which he suggests to them in his *Bill*, and for the most part the *Desire* is granted.

For regulating *Hearings* in *Presence*, appointed by *Deliverances* on *Bills*, or upon *Report*, It is Statuted, That all *Causes*, which by a particular *Deliverance* are to be heard in *Presence* on a certain *Day*, be peremptorly call'd that *Day*, according to the *Order* and *Date* of the *Deliverance*, and that a *Roll* be made of such *Causes*, which shall have the same *Privilege* as those *Inrolled* in the ordinary *Books* of *Inrolment*, the *Order* whereof cannot be altered, and that *Causes* in this extraordinary *Roll* be first discussed. And it is order'd, That *Parties* craving a *Hearing* in *Presence*, be ready to *Debate* instantler, otherwise that the *Lords* will determine upon the former *Debate*, and if they be ready, the *Lords* may hear them presently, or assign a *Day*. This extraordinary *Roll* of *Causes* to be heard on *Deliverances*, is kept by the *Lord President's* *Servant*, and is better known by the Name of the *Presidents Hand-roll*, however (notwithstanding this Regulation, which is scarce in Observance) for calling *Causes* in this manner, much depends on the *President's* pleasure.

Upon hearing the *Cause* in *presence* at the *Day* appointed, the *Lords* either Advise the *Cause* instantly, and Determine therein, or they ordain both *Parties* to give *Informations* against

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a certain Day, which is done in the Evening preceeding *that* Day, on which the *President Reports the Cause* (in the same way as is done by an *Ordinary* who *Reports a Debate* from the *Outter-house*) And in Order thereto has viewed the whole *Procefs*: After hearing of which *Report*, the *Lords Reason* among themselves upon the *Pleading*, and pronounce *Interloquitor*, by which if any of the *Parties* think himself lesed, he may crave a *Rectification* by a *Bill*, which is to contain his *Reasons* against either the whole *Interloquitor*, or part: And the *Lords* upon *Considering* and *Advising* this *Bill*, either alone, or with it, the *Answers* Ordained to be made thereto, *Will adhere to*, or *alter their former Interloquitor* as they shall see cause.

And the *Lords* by an *Act of Sederunt*, have Ordained, That these *Reclaiming Bills*, as all others *Complaining of Interloquitors* in *præsentia* must be offered within *Six Sederunt Days*, at farthest after pronouncing, *Decreets, Acts, or Interloquitors Reclaimed* against: And they have Declared, They will not in any Case, admit of more than two *Reclaiming Bills* from the same Party, after their first *Bill* against an *Interloquitor* in *præsentia*: And they have Discharged Their *Clerks* to present to them any *Second or Third Reclaiming Bills*, after the expiration of *Six Days* to be compted from the date of the *Deliverance* written upon the first or second *Bills* *Respective*:

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And they are also Discharged, To receive from the same Party more than three Bills Reclaiming against an Interloquitor.

After this Dispute, either before the Ordinary, or in presence, is ended; The next thing is the Probation of the Matters of Fact alledged by the Parties, which are either already proven of their own Nature, or by the Writs Lybelled on; Now the Summons and Action which need no Probation, are such as are Negative, for they prove themselves, as Declarators of Immunity, that the Pursuer's Estate Lybelled is not subject to such and such Servitudes acclaimed by the Defender, And therefore ought to be Declared free: As also, when the Pursuer Lybels, that the Verity of his Claim is openly known, *quia notorium debet allegari non probari*, Probation arising from the evidence of the Fact, and also from just Presumptions may be also here reckoned: Next no Term needs to be Assigned for proving Matters, which the Pursuer alledges to be manifest, and clearly proven by the Writs founded on, and produced in the Pleadings, which is called, a Probation by Writ instantly verified; and in Impugning such Lybels, the Defender must alledge, both against the Relevancy (in Law) of the Lybel, and say though it were Relevant, yet the same is not by the Writs produced sufficiently verified and proven; For, if he be silent in any one, he'll be presumed to acquiesce and acknowledge

knowledge the same, whereof a careful *Procurator* will be cautious ; But when the *Pleading* and *Alledgances* in *Fact* are not instantly verified, The *Lord Ordinary* Admits the same to *Probation*, and condescends upon the *Modus probandi* of each *Point* or *Article* ; and Assigns a *Term* for proving thereof : Now the *Interloquitor* allowing *Probation*, either *Litiscontests* the *Cause*, and determines the Relevancy of the mutual *Alledgances* of *Parties*, sustaining part, or Repelling part, or all ; and such is called an *Act of Litiscontestation*, as is declared above, or otherwise it determines not the *Relevancy*, and declares not what *Points* are *Sustained*, or which are *Repelled* ; But before *Answer* concerning the *Relevancy*, Ordains both *Parties* to prove their *Mutual Alledgances*, and this is called an *Interloquitor* before *Answer*, and the *Act* Extracted thereupon, an *Act* before *Answer*, from the Words in the *Interloquitor*, both which *Acts* have a different *Form* and *Order* in their *After-process*, as shall be shown hereafter, tho' in manner of adduceing the *Probation*, they both agree.

When the *Defences* are various and many, and require several distinct *Interloquitors*, the same *Form* of *Process*, as is above set down, is observed in discussing thereof.

Where the *Inner-house Interloquitor* upon *Report* or *Pleading* only determines the *Points* in contraversty according to *Law*, without mentioning

tioning any thing concerning the *Probation*, the *Party* in whose favour such *Interloquitor* is pronounced, Applies to the *Lord Ordinary* of the *Cause*, for a *Day*, to be Assigned for proving the several *Points* of the *Interloquitor*, if they be not already found proven, and the other *Party* being called, must propone his *Reasons*, why a *Day* cannot be Assigned, because he has sundry other *Defences* to propone, which he must do instantly, And to these the *Pursuer* makes *Reply*, And so furth as was done before, but in case he hath no other *Defences*, he may desire the *Party* to condescend on the *Manner* or *Mean* of *Probation*, he intends to make use of in proving the *Points* of his *Lybel*, *Exception* or *Answer*, &c. The diverse sorts of *Probation* are declared afterward, and frequently there arise *Contraversies* betwixt *Parties*, which kind is proper for proving the *Alledgance*, because some *Points* are probable by *Writ* or *Oath* of *Party*, which are not so, by *Witnesses*.

These *Acts* have either one *Term* or *Day*, which is Assigned either to the *Pursuer* alone, or to the *Defender* alone, or to both jointly, for proving the *Lybel*, or their *Respective* *Alledgances*, and this is the most common, or they have two *Dyets*, which is very rare, and falls out in *Cases* of *Competition*, arising in

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Actions of Mails and Duties, as when one of the *Defenders* offers to produce a better *Right* than that of the *Pursuer*, and refuses either to *Depone* himself, or to suffer the *Tennents* to *Depone* upon the quantity of the *Rents*; in which Dispute, it is now the *Form*, that the *Ordinary* Assign to this *Defender* (for example) the 5th of *June*, to produce his said preferable *Right*, and in case of his failzieing so to do, he Assigns the 15th of the same Moneth for him, and the other *Tennents* to *Depone* concerning their *Mails and Duties*, And if, at the Term Assigned, the *Defender* produce an *Interest*, The *Act* will not be call'd against the *Tennents*, for getting *Circumduction* against them, because till the *Competition* be discussed, the *Defender* can hinder them to *Depone*. Yea further, if before *Litiscontestation*, a *Competition* arise, and diverse *Interests* be produc'd, the *Procurators* for the *Tennents* are not in use to take a Day for producing them to *Depone*, for that is delay'd till the *Preference* be determin'd.

When the *Interloquitors* are not satisfying, the *Party* sometimes takes further Council and Advice, and uses all means to have his *Cause* fully represented, and plead in *Law* before the *Lords*, in order to which *Consultation*, the *Process* is got up from the *Clerk*, but he usually refuses to give up a *Process* to a *Defender*

der after *Act* or *Decreet* is pronounced, least by keeping up the same the *Pursuer* be retarded, and put to the trouble of seeking *Caption*, and putting it in *Execution*, to evite which Inconveniency; The *Clerk* gives the *Process* to be seen upon Consignation of an *Amand* of a Dollar or two, to be Forfeited in case the *Process* be not returned in a Day or two, or other space mentioned in the *Receipt*: Next the *Clerk* will not lend the *Process* upon *Receipt* of one, who is not a *Member* of the *Colledge* of *Justice*, and against whom it is not easy to get *Caption* Executed, if the *Process* be detain'd, and they are Discharged to give up to *Parties* any principal *Petitions* or *Bills*, whereupon there are *Deliverances* relating to *Decrees* or *Interlocutors* in *Process*, and where the same are appointed to be seen, they are to give only doubles thereof, and according to strict *Form* *Processes* can be lent to none, but to *Advocates* and their known *Servants*.

The *Cause* being again *Consulted*, if any further *Argument* or new *Ground* arise upon occasion of *Writes* newly found out, or otherwise, Application is made to the *Ordinary* for an *Hearing*; and because *Act* or *Decreet* is pronounced, it is most necessary to procure from the *Lord Ordinary* a *Stop* to the *Extracting* thereof, which is done by a *Write* under his hand, directed to the *Clerk* of the *Process* or *Extractor*, (for *Verbal Stops* are discharged by a

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a late *Act of Sederunt*) Ordering him to forbear *Extracting* any *Act* or *Decreet* in such a *Cause*, till both parties be further heard, and this *Stop* must be delivered to the *Clerk*, which serves for Intimation ; But seing no *Act* or *Decreet* can be *Extracted* till 24 hours after the same is read in the *Minute-Book*, parties are not in that time Solicitous to apply for a *Stop*, if they can secure to themselves a Hearing before, according to the course of the *Process*, this *Act* or *Decreet* can be *Extracted* ; yet here it is to be observed, that by *Act of Sederunt* it is Declared, that no *Stop* shall be granted, if the same shall not be obtained within six days after the date of the *Sentence* craved to be *Stoped*, and that no further time shall be granted, but the first *Dyet* that falls to the granter of the *Stop*, to come to the Bench in course ; and further that no *Stop* shall be given unless he who craves it exhibite in Write, to the Pronouncer of the *Sentence*, the particular points he desires to be heard upon, for all *Stops*, which must be in *Writing*, are again lately ordain'd to be subjoin'd to a Representation, craving the same, which the *Ordinar* may reject, unless he find a Relevant Ground therein ; And if thereupon he *Stop*, he shall cause give the other party the *Condescendence* to see ; that both parties may be ready at *Calling*, and that time be not spent with unnecessar Alterations at the Barr, and in case the *Stop* contain no determin'd day, till which *Extracting* is delay'd, the *Lords* have

have *Enacted* that the ſaid *Stop* ſhall not endure or continue above a Fortnight in time of *Session*, and if granted in time of *Vaccance*, ſhall not endure after the eight day of the down ſitting of the next *Session*, except they be renewed, wherefore if a *Stop* be not ſought in due time the *Judge* may reſuſe to grant the ſame, and ſo the partie *will be* obliged to apply for the Extraordinary remedy, which is by *Petition* to crave from the whole *Lords* a *Stop* to the *Ordinary's Act* or *Decreet*, and to be heard upon ſome New Grounds. Upon delivering of this *Petition* to the *Principal Clerk*, he uſes to call for the *Proceſs* from the *Under Clerk* or *Extractor*, and takes all with the *Bill* to the *Inner-house*, ſo that till this *Bill* be Read, no *Act* or *Decreet* is *Extracted*; But this is not a ſure way of getting a *Stop*, and is rather an Indulgence of the *Clerks*, and a practice, by which they uſe to favour *Petitioners*, For Regularly no Perſon can Warrantably *Stop*, but the *Judge* who pronounced the *Sentence*, and this is clear from what is dayly Experienced, that the naked preſenting of a *Bill* in the end of a *Session*, does not hinder the *Extracting* of *Act* or *Decreet* in time of *Vaccance*.

And as to *Petitions* either craving Rectification of an *Ordinary's Interloquitor* or a *Stop* to *Act* or *Decreet* pronounced by him, The *Lords* have enacted, that when any *Reclaiming Bill* is offered to the whole *Lords* againſt the

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Interloquitor of the *Ordinary*, the same is not to contain any New Alleadgance in *Law* or *Fact*, not inserted and set down in the *Minutes*, and insisted upon before the *Ordinary*, or contained in a *Representation* refused by him, without Prejudice to parties to urge their Alleadgances offered to the *Ordinary* upon New Arguments, and the *Clerks* are discharged to receive any *Reclaiming Bill* against the *Ordinary's Interloquitor*, unless the same be presented within eight *Sederunt Days* after Subscribing the *Interloquitor*. The *Lords* require that these *Reclaiming Bills* bear, that the Alleadgances in *Law* or *Fact* Therein-mentioned, were inserted in the *Minutes*, and insisted upon before the *Ordinary*, or contained in a *Representation* rejected by him, and the *Lords Answer* upon *Amand*, craved and refused.

And for the better dispatch of *Justice*, the *Lords* have Ordained, that all *Interloquitors* Pronounced by the *Ordinary* in absence, be signed the same day they are Pronounced; and that where *Interloquitors*, *Acts*, *Decreet*, or *Protestations* are Pronounced upon Debate, that the same be presented by the *Clerk* to be Signed by the *Ordinary*, within six days immediately after Pronouncing at farthest, within which time the *Clerk* is to be carefull to extend the *Minutes*, with *Certification*, that any *Warrant Signed* more than six days after the Debate, shall be Void and Null, excepting al-

alwise the two last days of the *Session*, upon which all *Interloquitors* Pronounced are to be *Subscribed* the same day of Pronouncing, and all *Interloquitors* to be Pronounced the four *Session* days preceeding the said two last days of the *Session*, are to be *Signed* within fourty eight hours after Pronouncing, otherwise to be Void and Null.

It is here to be observed, that after the *Cause* has been *Sentenced* by the *Ordinary*, if it be carried to the *Inner-house*, that *Ordinary* is exauctorat as to these points either determined by, or depending before the *Lords* in presence, so that he can neither help his own *Interloquitor* or stop it, and his Jurisdiction in that case can only be exerced in *Pleadings* upon new and separat *Defences*.

The last way to stop the sudden *Extracting* of *Act* or *Decreet*, is to crave from the *Extractor* thereof, a *Scroll* or copie of the said *Act* or *Decreet*, and to Consign a *Peice of Money* for his pains in Writing the *Scroll*, which, under pain of displeasure, and censure of the *Lords* or *Principal Clerk*, he dare not Refuse, and till the *Scroll* be delivered, and 24 hours thereafter, the *Act* or *Decreet* cannot be given out to the Party: This time being allowed to consider the *Scroll*, and make *Amendment* thereupon, and if the other Party find himself lesed by an *Informal* or *Wrongous Scroll* of *Act*, or *Decreet*, to be *Extracted*, upon *Complaint* he'll get *Redress*

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dress from the *Ordinary*; but if an *Act* or *Decree* be *Extracted* either before it be Read in the *Minute-Book* or within the 24 hours thereafter, or before a *Scroll* be delivered to the Party who duely sought the same, or within 24 hours after the *Scroll* was delivered, or after a *Written Stop* was given by the *Ordinary*, and duely Intimated to the *Clerk* or *Extractor*, upon *Representation* to the whole *Lords*, they will ordain the *Extract* to be returned and put into the *Clerks* hands; and will Recommend to the *Ordinary* to hear *Parties* upon the *Complaint*, and the *Cause* will be considered as if no *Act* or *Decree* had been *Extracted*: And if the *Ordinary* find that the *Extracting* of the *Act* was *Precipitant* or *Unwarrantable*, he will ordain the same to be *Cancelled*, and will hear the Party upon what he has to say in the *Cause*: But if the *Complaint* be groundless, and if it be found that the *Act* or *Decree* was *Legallie Extracted*, the same will be delivered back to the *Partie*.

The *Points* in *Contraverſie* being determined, and the *Cause* *Litisconteste*d, the *Pursuer* or *Defender* are ordained to prove the *Lybel* or *Exception*. &c. and an *Act* is *Extracted*, upon *Payment*, to a *Collector*, of the *Dues* of the *Clerks* and *Extractors*, conform to the *Regulations* 1695. This *Payment* is marked by the *Collector*, by a *Signature* which must be carefully preserv'd, for unless an *Act*, or *Decree*, or other *Write*, which is to pass his hands, be so marked

marked they make no *Faith*; Upon this *Act* *Letters of Diligence* may be issued out, if there be a *Warrant* for it, giving *Charge* to *Messengers*, to cite the *Respective Parties*, *Witnesses*, or *Havers of Writs*, (according to the circumstance of the *User* of the *Diligence*) to compare before the *Lords of Session*, upon a certain *Day*, to give their *Oaths* in the *Cause*, or to produce what *Writes* they have relating thereto; and this *Diligence* must be Executed before the *Day Assigned* in the *Act*, otherwise the *Diligence* and *Execution* will be ineffectual.

The *Kinds* of *Probation*, wherein a *Form* of *Process*, is to be observed, are, *Confession*, *Oath of Party*, *Probation by Write*, or *Witnesses*.

Confession made in *Judgement*, and accepted by any having *Interest*, or by another in his *Name*, is prejudicial to the *Maker* thereof, and makes sufficient *Faith* against him in all things confest.

Judicial Confessions, either by the *Party*, or his *Advocats*, made before the *Lords of Session*, need not be subscribed, tho such *Confessions*, or *Consents*, made before *Inferiour Courts* must be signed by the *Party*, or (if he cannot *Write*) by the *Judge*.

If the *Lybel*, or *Reply*, &c. be to be proven by the *Defenders Oath*, at pronouncing the *Act*, and Assigning a *Term*, It is fit, if the circumstance require it, to protest for a *Qualified Oath*, in which case the other *Party* *Protests*

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to the contrary, and the Ordinary usually admits both *Protestations*.

If the *Party*, to whose *Oath* a *Point* is to be referred, be Personally apprehended at the Citation in the Principal Cause, then his *Procurator* must take a *Day* to produce him at the Day to be Assigned, otherwise, he will be holden as *Confest*; But if the Citation was not *Personal*, and the *Defender* has not compeared to *Propone Defences*, the *Pursuer* cannot hold him as *Confessing*, but must seek a *Diligence* to cite him Personally to compear and give his *Oath* upon the points referred thereto, with *Certification*, if he Compear not at the Day Assigned, he shall be holden as *confest*, or otherwise he must raise a new *Summons*, and thereby cite him personally.

A Person out of the Country may not be sued to give his *Oath of Verity*, without the *Lords* deliverance. The *Oath* of a *Woman* cled with a *Husband*, proves not a *Civil Debt* against him, though a *Pursuer* may constitute his Debt by her *Oath*, that a *Decreet*, then pronounced, may take effect against her, if she survive her *Husband*, or, if she dy first, to affect her part of the *Moveables*; Nevertheless a *Defender*, may prove his *Defence* by her *Oath*, when pursued by the *Husband* for Payment of a Debt due to such a *Woman*.

If the *Defender* offer to prove any of his *Defences* by the *Pursuer's Oath of Verity*, he needs not cite him for that effect; But his *Procurator*

rator must take a Day, to produce him to De marked
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likeways as *confest*, and the Defence or Excepti given hi
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but if the *Defender* crave the *Pursuers Oath* of Represe
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When one is *Summoned* to give his *Oath*, in Oath, h
he compear, and be ready to *Depone*, but be duce hi
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moned him, after he is relaxed, he may be and the
Reponed against the *Decreet*, and allowed to circumd
give his *Oath*: but if he compear not, being the Dej
at the *Horn*, and is *holden as confest*, He will to Dep
never be *Repon'd* thereafter, except he purge Cause o
himself of *Contumacy*. the Ora

The Day or Term in the *Act* being past, untill f
the *Partie* who urges the *Calling* of the *Act*, Depone
delivers the same to the *Under-Clerk*, that it low hi
may be put into his *Roll* of *Acts* to be Called, not, in
and the days appointed for *Calling Acts* are is Extr
Wednesday and *Fryday*: If it be objected, and fest:
if the *Ordinary* find, that the *Act* is not duely of the
Inrolled in order to *Calling*, or that the Clerk of the
has not duely put up his *Roll* upon the wall of is only
the *Session-house* the Night before, The cal- his pa
ling is *step'd* for that day. has re

When the *Act* day comes, if the *Defender* has from t
not *Compeared* to *Depone*, and sought the sing of
Benefite of the *Pursuers Act*, the dues for ductio
Calling, being payed to the *Collector*, And him v
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marked on the *Act*, the *Clerk* of the *Process* holds calls by a *Macer*, conform to a *Roll* which is given him, this *Act*, and both *Partie's Procurators* being called to the *Barr*, the *Pursuer* Represents to the *Ordinary* in the *Outter-house*, before whom all these *Acts* are called, That such a point being referred to his *Adversarie's Oath*, his *Procurator* having taken a day to produce him to *Depone*; Which being now elapsed, the *Defender* has never yet *Deponed*, and therefore craves, that the *Term* may be circumduced against him, for not *Deponing*. If the *Defender* be not present to make *Faith*, and to *Depone*, his *Procurator* Represents the Cause of his *Absence*, which if it be Reasonable, the *Ordinary* will decern, *Superseding Extract* untill such a day, and if the *Party*, who is to *Depone*, compear in the mean time, he will allow his *Oath* to be taken, and if he compear not, in that time the *Decreet of Circumduction* is *Extracted*, and he is therein holden as *Confest*: But if a *Defender*, before *Circumduction* of the *Term*, Compear, and crave the benefite of the *Pursuers Act*, where the *Defender's Oath* is only required, and nothing to be proven on his part; or if the *Defender* or his *Procurator* has required the same, by way of *Instrument*, from the *Pursuer* or his *Procurators*, after elapsing of the *Term* assigned, and before *Circumduction*, the *Pursuer* will be obliged to furnish him with an *Act to Depone upon*, and he pays the

the dues for *Calling* and *Deponing*, after which the *Act* is again *Called* in a Forenoon, and the *Defender* makes *Faith*, and *Depons* in the afternoon, before one of the *Ordinaries* to Oath and *Witnesses*: The *Defender* may likewise *Compear*, and *make Faith* at the very Instant of *Calling* the *Act* by the *Pursuer*, and so save the dues of *Calling*, but he must pay afterward for his *Deponing*.

The *Partie* must *Depone* upon the points of the *Act*, and Answer *Interrogators* Relating thereto, for the *Lords* do not allow them to give in their Oaths in *Writing*.

By the Word *making Faith*, in our Law is meant, that the *Parties* do *Swear* (which is done with the *Right Hand Uplifted*) that they will *Declare the Truth*, for in old Language to *make Faith*, is the same as to *Swear*.

There being certain *Fees* due to the *Macers* for every Oath and *Deposition* of *Party*, *Witness*, and of the *Haver of Writes*, cited by *Incident Diligence* who pay as a *Witness*, these dues must be payed either at their *making Faith* or at least before they *Depone*, for if they be not payed, the *Macers* will hinder the taking of the Oath, or detain the *Parties*, But Generally the *Macers* have a *Servant* attending at the *Witnesses Barr*, to Collect the dues, and till the same be paid, Detains the Persons within the *Barr*, for unless they *make Faith*, the *Deposition* cannot be Lawfully taken before the

Ordinary to Oaths and Witnesses, without content of Parties, or their Procurators; Because by that Form of making Faith in a Forenoon, and calling the Act, all Parties are Certiorated, and Warned *Apud Acta*, to be present at the taking of the Deposition in the Afternoon.

The Parties Oath is taken by the Ordinary on Oaths and Witnesses, in this manner: The Clerk to the Process lays the Act before the Ordinary, who Ordains the Macers to call the Parties, and their Procurators with an audible Voice, and if the Pursuer do not compear, to Interrogate the Defender, upon particular Interrogators founded on the Act, and deduced consequentially from it, let him blame himself, for tho' the Pursuer be absent, the Defender Depones, provided he be Master of the Act, without which the Ordinary cannot know what is to be proven; Now, if the Pursuer absent himself, nothing can be done, till by form of Instrument, he be required to furnish the Defender with his Act to Depone upon, otherways the Defender Protests that he be free from this instance, and takes Instruments in the hands of a Notar before Witnesses, after Extending of which Instrument, the Defender having payed to the Collector, the Dues for Calling, and for his Oath as above, he compears in a Forenoon in the Outer-house, and gives in his Instrument to the Clerk of the Process, who thereupon calls the Partie's Procurators to the Barr, and

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the *Defender* makes *Faith* ; And in like manner in the After-noon, of that, or any other Day he *Compears* before the *Ordinary* to *Oaths* and *Witnesses*, And after *Calling* by a *Macer*, the *Pursuer*, and his *Procurator*, to *Compear* before the said *Ordinary*, The *Defender* *Resumes* his former *Instrument*, and Declares his readiness to *Depone*, and craves to be *Dismissed*, unless the *Pursuer* furnish him instantly, with an *Act* to *Depone* upon ; If none *compear*, the *Ordinary* dismisses him, which *Dismission* is Written by the *Clerk* of the *Process* upon the back of the *Instrument*, and is Signed by the *Ordinary*. But if the *Pursuer* or his *Procurator* *compear* and offer to furnish the *Act* required, he is allowed 24 Hours, These *Instruments*, and this proceeding has this effect, that the *Pursuer* can never upon the former *Act*, *Circumduce* the *Term* against this *Defender* till he of new again be *cited*, because the first instance perished through the *Pursuer's* neglect, but the best Remedy were for the *Defender* himself, to *Extract* the *Act*, and *Depone* thereupon, and to prosecute the *Cause* to a *Decreet Absolvitor* upon which he may not only obtain his *Damages*, but all ground of *After-process* will be cut off, For after the *Cause* is *Litiscontested* the *Defender* has as great Interest in the *Process* as the *Pursuer*, and may prosecute the same to the end.

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At taking the *Defender's Oath*, the *Pursuer* produces *Interrogators* relating to Circumstances of *Fact* mentioned in the *Act*, or which are Natural Consequences from it, and requires the *Defender* to *Answer* them, in which case there be many times great Wrangling and Dispute about the *Relevancy* of *Interrogators*, which must be determined by the *Ordinary*, who sometimes in difficult and important Cases, will take Advice of the *Lords*, by propounding the Matter in a Question; The *Relevancy* of *Interrogators*, being established, the *Defender* must *Answer* these distinctly, so as his *Answers* may be brought to a positive Proposition, either denying, or acknowledging the *Fact*.

The *Defender* having Protested for a qualified *Oath*, much Dispute arises betwixt the *Advocats*, if the *Quality*, proposed and Alledged by the *Defender*, be *Intrinsic* or *Extrinsic*. A Qualified *Oath*, is that which contains Circumstances and Conditions, or other *Qualities*, directed to the *Matter of Fact* referred to *Oath*, as in a Claim of *Debt*, offered to be prov'n by *Oath*, the *Defender* Swears, that the ground of *Debt* was the Price of Goods, which were either not at all, or not fully delivered, &c. or when to the Confession and Acknowledgement of the *Debt*, the *Defender* adjects, that the same, or part of it, was paid to the *Pursuer's* order, or that the *Pursuer* is Owing to the Depo-

nent an *Equivalent Sum*, or the like, now the *Qualities* are *Intrinsic*, that are necessarily im-
 plyed in the nature of the Thing, or are part of the Bargain, as in the first example, or the *Quality* is *Extrinsic*, that is, has not a natural
 necessar dependence upon the *Principal Matter* but is Extraneous thereto, as in the second
Case, and this resolves into a *Defence*.

Hence it follows, that no *Quality* avails the *Deponent*, but an *Intrinsic* one, nor does the *Ordinary* determine, which of the two it is, but Ordains all to be marked, that has an *Affinity* to the Subject Matter of the Oath. For it is reserved to the *Lords*, to Judge and Advise the Oath, Whether the *Quality* adjoined be *Intrinsic* or not?

The *Points* Ordained to be proven by the *Defender's Oath*, are sometime such as cannot in *Law* be admitted to be proven by *Witnesses* and yet the *Pursuer*, could verify the same by the most Famous Men, such as a *Promise*, or the like: However, if the *Pursuer* fear that the *Defender* will deny his *Lybel*, or will perjure, and is desirous to have these Persons present, when the *Defender Depones*, which we call *Confronting a Party*, he craves *Warrant* for citing the said Persons, to compare against the Day to be Assigned, to be present at the *Defender's Deponing*, and the *Ordinarie* of the *Cause* will allow the same in the *Act of Litiscontestation*, and if he refuse, the *Pursuer*

must present a *Petition* to the *Lords*, craving
 he may be allowed to *Confront* the *Defender*
 before the *Persons*, who were present at the
Promise, and that is frequently granted,
 when the *Pursuer's Case* is favourable, and the
Defender's is suspected, and then the *Persons*
 are allowed to be present, and to hear the *De-*
fender Depone, but no more, for they are not
 permitted, to ask *Questions*, or to make *An-*
swers, but the *Defender* must *Answer* all per-
 tinent *Interrogators*, as, if or not in pre-
 sence of such a Man, he did, or said so, and the
Oath like.

The *Oath*, when closed is signed by the
Party, if he can *Write*, and by the *Judge*,
 but if he cannot *Writ*, it is marked in the *Oath*
 that he Swears he cannot *Write*, and the *Or-*
dinarie's Subscription serves for all.

This *Oath* is either *Clear* or *Intricat*, if it be
clear the *Ordinary* may mark thereupon, that
 this is a *Clear Oath*, and Sign it, which after
Avisandum is made therewith, by the *Ordinary*
 in the *Outter-house*, doth Warrant a *Summar*
Advising thereof, as shall be hereafter Declar-
 ed, but if it be *intricate*, it must abide the
 course of the *Rolls*, and in both these *Cases*, the
Act is called in the *Outter-house*, and great
Avisandum is made with the *Oath*.

What is said of the *Defender's Oath*, may like-
 wise be applyed to *Cases*, where the *Pursuer*
 is

is to *Depone*, for the *Form* of procedure is the same in both.

If the *Probation* be by *Writings*, the *Interlocutor* in the *Act* should carry, a *Reservation*, the other *Party* of all *Objections*, which he may move against these *Writings* to be made use of as means of *Probation*, and his *Procurator* when the *Writings* are produced, usually *Protests* to be heard upon his *Objections* and *Advising* of the *Cause*, And here it is to be considered, that the *Writings* are either in the *Party's* own hand, in which *Case* they must be produced *in termino probatorio*, but if they be in the custody of another, then at making *Litigation*, *Diligence* must be sought, which upon plausible *Reasons* is readily granted, against all *Havers* of the said *Writings*, or those who have had, or fraudfully have put them away, to compare upon the *Day* of *Probation* and to produce the same for proving.

If it be *Alledged*, That the *Persons* to be cited by the *Diligence* are out of the Country, no less than 60 *Days* will be allowed, for *Executing* the first *Diligence*, but at granting a second *Diligence*, a lesser, and competent time at the *Discretion* of the *Judge*, will be given for putting the same to *Execution*.

A *Diligence* is not easily obtained for *Writings* granted to one's *Father*, *Grand-father*, &c. to whom the *Party* is *Heir*, because they are his own *Evidents*, and are presumed to be in his

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Possession, except the Party be *Minor*, or other-
ways condescend Relevantly, *quomodo desint possi-*
ere.

By this *Diligence* either *Defender* or *Pursuer*
may be *Summoned*.

If, upon the first *Act Day*, after the *Term*
Assigned in the *Act*, or any *Act Day* thereafter,
when the *Act* is called, the *Writings* be not pro-
duced, or if *Diligence* be not Executed for *Producti-*
on thereof, then, the *Term* is *Circumduced* against
the Party, on whom the burden of *Probation*
did ly, and *Decreet* of *Circumduction* for not
proving, is pronounced, *Condemning* or *Absolv-*
ing, the words, *Circumduction*, and to *Circum-*
duce, are *Terms* of the *Civil* and *Roman Law*,
made use of in our *Practique*, and signify a
Deletion, or cutting off of the *Cause*, when it is
as it were taken out of the *Roll*; The Party
not compearing to do what he was enjoined,
for *Circumducere* is the same, as *inducere*, *dele-*
re, *abrogare*, *cancellare*, *obliterare*, *ad nihilum ponere*.

When the *Writing* is produced, *Avisandum* is
made with it, to the whole *Lords*, and the
other Party, craves *Circumduction* of the *Term*
quoad ultra, which has this effect, that his
Adversary may not be allowed a further time,
to produce any other *Writing* thereafter, to be
made use of, as a mean of *Probation*, in that
Cause, and the *Ordinary* makes *Avisandum*, and
Circumduces accordingly: However the *Lords*
at *Advising* receive *Writings* instantly produced.

If

If *Diligence* against *Havers* of *Writs* be Reported, *id est*, returned to the *Process* and the same (duely Executed) produced at the time of Calling of the *Act*, the *User* thereof, in order to stop *Circumduction*, craves, a second *Diligence* by *Caption*, against those cited in the first *Diligence*, which is accordingly granted, and a competent *Time* allowed, to put the second *Diligence* to Execution; for a first *Diligence* is like *Horning*, and the second *Diligence* has the effect of *Caption*.

Now at Calling the *Act*, and craving a second *Diligence*, one is not allowed to see the first *Diligence*, and nothing can hinder the giving second *Diligence*, Except the first has not been Executed before the Day of the Term of *Probation*, which must be noticed by the *Procurators*.

No *Act* is in use to be *Extracted* upon this Calling, but the Party who craves a *Second Diligeuce*, takes out the same against all those contained in the *Execution* of the *First Diligeuce* and none others, for the first *Diligence* is General, but the second is particular, being conform to the *Executions* of the *first Diligeuce*; both are Written in the *Clerks Chamber*, Signed by a *Principal Clerk of Session*, and Sealed by the *Session Signet*: And the *Extracting* of a *Second Diligeuce* abides not the *Course* of *Reading* in the *Minute-Book*.

By

By this *Second Diligence*, the persons Named therein, may be apprehended by a *Messenger at Arms*, and brought by Force before the *Lords*, in order to *Depone* concerning their having of the *Writings* called for, If the same be put to *Execution* the time of *Session*; but if it be in time of *Vacance*, they are in use to be put in *Prison*, where they will ly till they *Suspend* and obtain a *Charge* to set at Liberty, upon their producing what *Writings* they have, and finding *Caution* under the *Penalty* of a considerable Sum of Money, to *Compear* before the *Ordinary* to *Ours*, on a day prefixed (which must be in the *Session* time) to *Depone* concerning the *having of the Writes* called for, upon doing of either of which, the Party is set at Liberty.

This *Second Diligence* may be *Executed* at any time, either before or after the day *Assigned* for *Reporting* thereof, and the *Parties* apprehended thereby, will be admitted to *Examination* at any time before *Extracting* Decreet of *Circumduction*, or before, the *Lords* prepare or *advise* the *Cause*.

If in Obedience to the *Charge* on the *first Diligence*, or upon notice that a *second Diligence* is Issued out, the *Persons* *havers* of the *Writings* *Compear*, and offer themselves to *Depone*, they apply to the *Party* at whole *Instance* they are *Cited*, that he may prepare all things, in order to their *Deponing*.

Again

Again, the *Party uſer of the Diligence* paying the *Clerk's Dues* for a *Calling*, and certain other *Dues* for each of the *Perſons* who are to *Depone*, and having the *Collector's Receipt* upon his *Act*, delivers the ſame to the *Clerk* of the *Proceſs*: who, without any *Previous Intimation*, Causes a *Macer* any time in a *Forenoon*, call both *Parties* and their *Procurators* to the *Outter-Houſe-Barr*, to whom he *Intimates* the deſign of *Calling* the *Act* at that time, namely, that ſuch *Perſons Cited* at the *Instance* of one of the *Parties*, do *Compear* to *Depone* concerning their *having* certain *Writings*, which the *Party* is to make uſe of, as *means of Probation*, after which the *Ordinary* in the *Outter-Houſe*, before whom all this is done, ordains the ſaid *Perſons* to *make Faith* and *Swear*, that they ſhall *tell the Truth*, which they accordingly do, by the *Right Hand Uplifted*, and then they are ordained, to wait on in the *Afternoon*, that they may *Depone* before the *Ordinary* to *Oaths* and *Witnesses*.

When the *Perſons Compearing* upon *Diligence*, have thus *made Faith*, the *Clerk* to the *Proceſs* *Writes* upon the *Act*, the *Date*, and *Witness Avifandum*, and *Inserts* it in his *Minute-Book*.

In the *Afternoon*, they *Depone* before the *Ordinary* to *Oaths* and *Witnesses*, concerning their *having* of the *Writings* called for by the *uſer of the Diligence*, and muſt *Diſtinctly Answer* the following *Interrogators*, If they have theſe *Writings*,

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Writings, If they had them since the *Citation*, or have *Fraudfully* put them away, or If they ever had them, or If they know or Suspect where they are; If they have them, they must *Produce* them at the time of their *Deponing*, But if they do not Decline the *Producing*, and have a Probable cause, why they did not bring them with them; as that they knew not that such *Writings* would be called for, or that there is a quantity of *Writings* in such a Coffer, or place, and knows not what they are; the *Ordinary* will allow them a Competent time to bring these *Writings* in particular, or in the General, if they desire it, wherein if they Fail, they are proceeded against as if they had never thus *Compeared*.

One is said to have *Fraudfully* put *Writings* away, if they have, since the *Citation*, without *Legal Compulsion*, put them out of their Custody, and if at *Deponing* they acknowledge their so doing, the *Ordinary* takes the *Oath* as emitted, and the *Partie* who is *Lesed*, may *Apply* to the *Lords* by *Petition*, *Representing* the *Case*, and *Crave* that the *Caption* may be put to *Execution*, ay and while the *Writings*, owned to have been *Fraudfully* put away, be *Produced*, which will be granted; But in the mean time, this *Acknowledgement* will not *Prejudge* a *Third Party*, such as the *Pursuer* of the *Principal Cause*, except the *Writings* called for were *Produced*; albeit if through the *Havers* Fault, the *Cause* be lost,

the

the *Party Lesed* will get *Action of Damnage* against him who has thus *Fraudfully* put away those *Writings*.

Every one is obliged to *Answer* the last *Interrogator*, if they know, or *Suspect*, where the *Writings*, called for, are, in order to give all possible *Information* to the *Party*, that the *Truth* be known, and *Justice* fully *Administred*.

A *Competent* time being allowed for taking the *Deposition* of the *Persons* called by these *Diligences*, on the next *Act* day, the other *Party* causes call his *Act* again, & *Circumduces* for not *proving* by *Writings*, in manner *Determined* by the *Act*, if no *Writing* is *Produced*; for a longer *Delay* is not granted, except the *Ordinary*, upon consideration of the favourable-ness of the *Cause*, *Circumduces* conditionally, allowing the other *Party* to *produce* what *Writings* he can, betwixt and such a day, and allowing these that have not yet *Sworn* to *Depone* in the mean time, and *Superseeds Extracting*; But if that time do not serve the *Turn*, or if these called by the *Diligences* have been *Refractorie* and *Fraudfully Abstracted* the *Writings* necessary, or if they have only given the *Partie* better *Information* where the *Writings* are, *Application* is made to the whole *Lords*, who upon *Grave* and *Weighty Considerations*, will *Stop Extracting* the *Circumduction* for a while, That the other *Party* in the mean time, may recover these *Writings*, and
also,

also, upon new and serious *Reasons* Emergent, they'l *Prorog* the Stop, but this is seldom done, and is not to trust to; After all these *Delays*, if nothing be *Produced*, the *Decreet* of *Circumduction* may be *Extracted*; But when ever any *Writings* are *Recovered*, while the *Decreet* is not *Extracted*, the Party to whom they're *Produced*, causes call the *Act*, and makes *Avifandum* with these *Papers* or *Parchments*.

If the Party user of the *Diligence*, delay to dispatch these *Cited* thereby, and Deferrs *Calling* the *Act*, or paying the *Dues*, they *Compear* before him or his *Procurators*, and *Require* that the *Act* be called, otherwise they *Protest* that they may be fr e from the effect of both the *Dilligences*, and take *Instruments* in the hands of a *Nottar* before *Witnesses*: In likemanner they *Compear* before the *Ordinary* on the *Oaths* and *Witnesses*, and after *Calling* the Party and his *Procurators*, and the *Clerk* of the *Proces*, they *Resume* the former *Instrument*, declare their willingness to *Depone*, and *Protest* as above, whereupon the *Ordinary* dismisses them.

Persons called by *Diligence*, *Compearing* upon the first *Citation*, and being *mean Men*, are not bound to *Depone*, till they get assurance of *Payment* of their *Expences*, which, it fought, the *Ordinary* to *Oaths* and *Witnesses*, will, after *Dponing*, mod fie, and ordain *Payment* to be made accordingly: And if the Party or his

Agent

Agent pay not willingly, the ſaid *Lord Ordinary* will give a *Written* order for *Payment* of the *Dues* as follows, viz. *Eight Shilling* to each *Footman*, and *Sixteen Shilling* to each *Horseman*, for each day of *Attendance*, and the days of *Journeying* to and from their *Dwelling Houſe*, to be payed in 24 hours thereafter, and in caſe *Payment* be not made, he orders further *Payment* of as much more, as is needfull to *Extract* an *Act*, and raiſe *Horning and Caption* thereon, which he *Liquidats* by the ſame *Interloquitor*: But if they hide the *ſecond Diligence* they get no *Expence*, which is a *Puniſhment* for the unneceſſary *Trouble* and *Coſts* they put the *Partie* to.

The *Writings* neceſſary for *Probation*, at leaſt ſuch as the *Party* could recover, being *Produced*, the *Purſuer* or the *Defender*, the next *Act* day, cauſes call the *Act*, makes *Aviſandum* with the *Writings Produced*, and *Circumduces Quoad Ultra*.

Not only *Writings*, wherein the uſer of the *Diligence* has *Interſt* may be called for, but like- wiſe *Writings*, which belong to others, and wherein he has no farther *Interſt*, than that they verify and prove his *Alledgance*, muſt be produced, and put into the *Clerk's* hands, where they remain till the *Concluſion* of the *Cauſe*, after which they're delivered back to their proper *Owyner*; But if the *Parties* be in

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mora, and if the *Process* linger, Upon Representation thereof to the *Lords*, the *Pursuer* or *Defender*, will be Ordained to insist with vigour in the principal *Cause*, and if they Procrastinate, the *Writings* will be order'd to be given back.

If the *Exceptions*, and *Alledgances* in the Principal *Cause*, are to be proven by *Witnesses*, *Diligence* must be sought for citeing of them, which is executed in the same way, as is done against *Havers* of *Writings*, if they compear not upon the first *Diligence*, they'll be forc'd to it by a second.

The *Form* of *Process* observed in citing *Witnesses*, is in every respect the same, as in calling *Havers* of *Writings*: If Servants to any Nobleman, or Gentleman be cited, who for fear of disoblidging their Master, go out of the way, and will not compear, upon *Petition* to the *Lords* Representing this, *Letters* will be granted, charging their Master to produce them to *Depone*.

If the other *Party* have any *Objections* against the *Witnesses*, he may, if he please, declare so much at their making *Faith*, but they will be reserved to be Proponed before the *Ordinary*, when the *Witnesses* come to *Depone*.

A *Party* may cite as many *Witnesses* as he pleases, but only Twenty four will be admitted and examined, for proving one and the same

ſame Point, and tho' *Diligence* be but once granted, yet in ſingular and favourable *Cases* (as when the Party has lately come to the notice of new *Witnesses*, who are neceſſary, or that ſome cited in the former *Diligence*, are removed out of the Country, or Dead,) the Lords will allow a new *Diligence* for citing other *Witnesses*, and none but ſuch as are cited by the firſt *Diligence* can be brought to Depone by a ſecond.

Witnesses will be received upon the very day of Compearance, to which they are cited, and when they are preſented to the Ordinary on the *Witnesses*, the Clerk, as well as the other Party, or his *Procurator*, are to notice, if they be contained in the *Diligence*, next he is to be Sworn, That is, the *Formula* of the Oath propoſed to *Witnesses* is to be Adminiſtered, which is this, *That by GOD himſelf, and as he* (the *Witness*) *ſhall Answer to GOD at the great Day, he ſhall declare the Truth, in ſo far as he knows, or ſhall be asked at him, and ſhall Declare nothing but the Truth.* And they muſt be purged of *Partial Council*, and Swear, That, *they bear no ill Will to either Party; That, they have received no good Deed, or promiſe of good Deed to Depone in the Cauſe; That, no perſon has taught or Inſtructed them how to Depone.*

But before the *Witness* be Sworn, the other Party muſt propoſe what *Objections* he has, why the *Witness* to be Examined cannot be received

ed and these *Objections* must not only be Sustained, by the Ordinary as *Relevant*, but they must be instantly *Verified*, and if any *Debate* of moment arise upon any *Objection*, the Ordinary will delay the *Examination* of that *Witness* till next day, and by the first occasion will Advise with the *Lords* concerning it.

All *Witnesses* should be Men of *Firm Judgment* capable to discern and understand what is done or said, Men of *Probity*, *Good-fame* and *Reputation*, *Impartial* as to either *Partie*, and having no *Interest* in the *Cause*; hence, *Persons* labouring under *Infirmities* of *Mind* as *Idiots*, *Mad-men*, *Infants*, and all under *Pupillarity* or *Fourteen years*; as also those who have *Natural Impediments* of *Body*, as *Blindness*, *Deafness*, and *Dumbness*, are not received *Witnesses*, nevertheless one after *Pupillarity* may *Witness* things which he saw in his *Nonage*, if at the time he was *Pubertati proximus*, or of that soundness and *Firmness* of *Judgment* to *Comprehend* or *understand* and *Remember* what he did see; likewise persons scandalously *Vicious*, and *Debauched*, or *Excommunicated*, are *Excluded* from being *Witnesses*.

Infamy is a *Relevant Objection*, which is inferred, when the *Witness* by the *Sentence* of a competent *Judge* is declared *Infamous*, or when the *Infamy* is *Notorious*.

A *Person* not worth the *King's Un-law* i. e. *Ten Pounds Scots*, cannot be a *Witnesses*, But, if

if he has a *Calling*, he may be *Witnesses*, notwithstanding of *Povertie*.

Such Degrees of *Affinity*, or *Consanguinitie*, as seclude one from being a *Judge* to either *Party* or other *Relation*, as being in *Family* and having *Dependance*, under awe, and *Dread* as a *Servant*, or a *Removeable Tennent*, hinders any from being a *Witness*; yet one within the degrees forbidden descending from a *Bastard* and a *Tennant* in a *Dwelling* within *Burgh*. The Son of a *Removeable Tennent*, albeit he be in *familia paterna*, or his *Cottar*, may be received *Witness*.

Capital Enmity and *Deadly-feed*, do in like manner *Incapacitate*.

Giving *Council* and *Advise* in the Cause, *Fomenting the Plea*, being present at *Consultations*, and assisting in carrying on the *Process*, *Ultraneously* offering *Testimony*, and telling before the *Summons* is raised what they know in the *Matter*, do also hinder; though after *Process* is intended, if persons *Declare Verbally*, it will not amount to a *Proditio Testimonii*, except they give a *Declaration* in *Writing* and *Sign* it.

Receiving any *Benefite* or *Good-Deed*, or accepting a *Promise* thereof, beside the Ordinary *Expence* allowed to *Witnesses* of mean Condition, incapacitate a *Witness*.

Such as may gain or lose in the Cause, as being *sharers* therein, also *si foveant consimilem causam*

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causam, and may advantage their Interest in a like case cannot be Witnesses.

Advocats or *Writers* cannot be *Witnesses* against their *Client*, if the *Interrogators* be such as will make them reveal their *Client's* Secrets, That is, any private *Advice* given to the *Client*, But they cannot shun Declaring the *Verity* of what consists in *facto*, *cum quivis possit cogi ad dicendum Testimonium quod est munus publicum*, so an *Advocat* or *Writer* will be forced to *Declare* if he has or saw among his *Client's* *Papers*, a *Writing* called for.

But much lyes in the *nobile officium* of the *Lords*, who, in respect of the Importance of the *Cause*, *Antiquity*, *Capacity* and *Penurie* of *Witnesses*, and in Respect of *Persons* being necessarie *Witnesses*, will mitigate the Rigour of the *Law*, and pass by one or other of the said *Objections*.

Regularly *Women* cannot be *Witnesses* in *civil Causes*, yet they're admitted to *Prove* circumstances and matters of *Fact*, at which *Women*, by the custom, are only present, as in proving that a *Living Child* was *Born*, and did *Cry*, The *Mid-wife*, and other *Women*, present at the *Birth* will be admitted *Witnesses*, For *Men* are not in use to be present at *Child-Bearings*.

The *Lords* will sometimes admitt *Witnesses* against whom one or other of the forementioned *Objections* does reach, and it will be marked before the *Deposition*, that the *Objection* was made

made, and that the *Witness* was admitted *cum nota*; and generally, when *Witnesses* are ordained to be *Examined ex nobili officio*, all Persons whatsoever are *Admitted*, and the *Lords* at *Advising the Cause*, conſider the import of ſuch *Testimonies*.

The *Objections* againſt *Witnesses* muſt be inſtantly *Verified*, and the ſame are generally referred to the *Oath*, either of the *Witnesses* themſelves, or of the *Party* preſent, If a *Witness* adduced for *Proving* exception or reply be caſten, The *Defender* will get another allowed him in his Place, not ſo if the *Witness* was *Cited* by the *Purſuer*, for *Proving* his *Lybel*; The *Defender's* caſe in this *Point* being more favourable, than that of the *Purſuer*, If the *Objection* cannot be inſtantly *Verified*, and the *Partie* have full purpoſe to caſt the *Witness*, he muſt at the time *Proteſt* for *Action* of *Reprobatur*; In which, he is allowed to prove his *Alleadgance* as accords of the *Law*, A *Reprobatur* is only, when a *Partie* undertakes to *Improve* the *Preliminaries* of the *Depoſition*, ſuch as, That *Judicial Confession* given by the *Witness* in *Judgment*, concerning the *free goods* he hath and whoſe *Man* he is, his *Age*, &c. Or the *Ratio Scientie* of the *Fact* mentioned, which if *Improven* by an *Action* of *Reprobatur*, will make his *Depoſition* not to be *Reſpected*; In the mean time, the *Adviſing* the *Testimonies* will be *Delayed*, and the *Principal Cause* will be *Dor-*

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mant: This *Action of Reprobatur* may be *Raised* before the *Witnesses* are *Examined*, when it is suspected, that such *Persons* who are not *habile Witnesses*, are to be *Cited*, The effect whereof is, that they may *Cite Witnesses* to *Prove* their *Objections*, and *Grounds of Reprobatur*, at the *Term Assigned* for the *Witnesses* to *Compare*: But if the *Parties* never *Raise Summons* nor *Protest* for *Reprobatur* before *Examination*, they are presumed to *Acquiesce* in the *hability* of the *Witness*, unless they were *Adduced* in *Absence*, or the *Grounds of Reprobatur* have since come to notice

Falsehood of the *Testimonie* is no *Ground of Reprobatur*, But *Incapacity*, *Inhability*, *Corruption*, or *Prevarication* of a *Witness*, or *Proditio Testimonii* Renders him *Insufficient*.

Before the *Witness* be *purged*, the *Objections* must be *Propounded*, But whether the *Party* *Propound* any *Objection* against the *Witness*, or not, the *Judge* always *Purgeth* the *Witness*, That is, makes him *Swear* upon the head of *Partial Council*, *Feed*, *favour* and *Good Deed*, after which, he proceeds to *Interrogate* him upon the *Points Ordained* to be *Proven* by the *Act of Litiscontestation*, conform to the *Interrogators* given in by the *Adducer*, which are found *Relevant* by the *Ordinarie*, and are consistent with the *Act*; where it is to be observed, That the *Partie*, against whom the *Witness* is *Adduced*, may *propound* to him *Relevant Interrogators*, not on-

ly upon *Points* admitt'd to the other *Partie's* *Probation*, But likeways make use of him, for *Proving* these *Alleadgances* which are admitted to his own *Probation*, and propound *Interrogators* thereupon, albeit that *Witness* was not *Cited* by his *Letters of Diligence*.

The *Formula* of the *Oath* is, That such a *Man* of such an *Age*, *Married*, or not *Married*, and *Solutus*, *Compeared*, and *Solemnly Sworn*, *Purg-ed* of *Partial Counsel*, *Examined* upon *Oath*, and *Interrogated*, &c. *Deponed* such and such things, at the close of the *Oath*, the *Cause* of the *Witness's* knowledge of the matter of *Fact* is *Declared*, which is either manifest from the *Fact* it self, and is thus exprest *Causa Scientia patet*, or otherwise exprest, Thus, *Causa Scientia*, the *Deponing Witness*, was *Born* and bred up in such a place, and has *Lived* there these *Twenty* or *Thirty* years, &c. And the *Conclusion* of the *Oath* is, And this is the *Truth*, as he shall *Answer* to *GOD*, all which, is *Signed* by the *Witness*, and if he cannot *Write*, it is mentioned, That he who *Deponed* could not *Write*: And in both cases the *Ordinarie* on *Oaths* and *Witnesses* *Signs*.

If the *Witness* be a *Quaker*, his *Testimony* is not an *Oath*, but a *Declaration*, and the *Formula*, is, That he *Declares* this to be the *Truth* as in the *Presence* of *GOD Almighty*, which *Declaration* is accepted by the *Lords*, and has the same effect with an *Oath*.

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prest, and if he be *Married*, or *Un-married*, for which, no other reason can be given, than that thereby the veracity of the *Witness*, or his *Firmness* of *Judgment* may appear, for he who knows not his own *Age* is as good as an *Idiot*, and he who *Swears Falsely* or *Variouly* concerning that, cannot but emitt a *Suspected Testimony*, 2do. Generally *Depositions* Relate to *Facts* which may respect time, and by expressing the *Witnesse's Age*, one may discern if he could be *Capable* and *Habile* at the time of the *Fact* *Deponed upon*. The *Depositions* of *Parties* or *Havers of VVritings*, bear neither *Age*, nor are they *Purged of Partial Counsel*; the *Ordinary* who *Examines VVitneses*, is ordained immediatly, after *Examination*, to set down upon the *Act* or *VVarrant for Examination*, the Names of the *Witnesses Examined* by him, and *Subscribe* the same. And it is declared by an *Act of Sederunt*, That the *Lords* will have no regard to the *Depositions* of *Witnesses*, whose Names shall not be so *Marked*. However this *Act* is in *Disuse*.

If the *Party* whose *Oath* is to be taken be out of the *Kingdom*, or be *Sickly*, and *Infirm* through *Age* or other *Disease*, so as therethrough, or because of the distance from *Edinburgh*, he cannot compear before the *Ordinary*, his *Procurator* at taking a *Day* for him to *Depone*, must, at *Litis contestation* represent to the *Ordinary*, his *Client's* *Inability* to compear personally, and

& must crave that a *Commission* may be granted to such a *Person*, as the other *Party* shall Nominate, to take his *Deposition* at his Dwelling House in the Country where he is, which must be condescended on, and if the other *Party* consent to this *Commission*, the *Ordinary* may grant the same, but if he refuse, Application must be made to the whole *Lords* by *Petition* for that effect, and if the *Reason* be verified by *Declarations* of Creditable Persons, or if the same consist with the Knowledge of any of the *Lords*, *Commission* will be granted, whether the other *Party* will, or will not; The *Commissioner* is either an *Inferior Judge* in the Country, or other Gentleman, named by the contrary *Party*: In this *Commission*, Power is ordinarily given to the *Commissioner* to choise his own *Clerk*, tho' generally he is named by the contrary *Party*.

If there be appearance of Contest, about admitting pertinent *Interrogators*, because the samen cannot be properly adjusted before the *Commissioners*, certain *Interrogators* approved by the *Ordinary*, are in use to be inserted in the *Commission*, as a *Rule* and *Directory*, in taking the *Oath*, This *Commission*, beside the *Commissioner's* Name, contains a *Day*, and *Place*, when and where the *Party* is to compear and to Depone: As also, upon what *Day* the *Commission* is to be Reported, which is the *Term* Assigned in

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in the *Act*, and all *Parties* are warned thereof, *apud acta*.

Upon the *Day*, all *Parties* compear before the *Commissioners*, and the *Deposition* is taken in the same manner, as before the *Ordinaries*, to *Oaths* and *Witnesses*, with this speciality, that the *Depositions* and other *Writings* laid before *Commissioners*, are instantly sealed by the *Commissioners*, and the *Seal* kept intire, till they come to the *Clerks*.

If the *Party*, whose *Oath* is to be taken, be absent, and the *Commissioners* present, and ready to take the *Deposition*, *Instruments* are taken thereupon.

If all concerned be present, and if the *Commissioner*, will not take, or the *Averse-Party* will not allow the *Oath* to be taken, *Instruments*, are also taken, which will be the ground of a *Petition* to the whole *Lords*, in order to stop *Circumduction* of the *Term*, and to procure a *New Commission*.

The *Term* Assigned for *Reporting* the *Commission* being elapsed, The *Act* is called, and by the other *Party*, It is craved, that he, who should have *Deponed*, may be holden as confest, and *Decreet* given, or that *Circumduction* may be granted, for his not proving by *Witnesses*, or *Writings*, in the *Terms* of the *Act*; to stop which, the other *Party* produces the *Commission*, and *Depositions*, or *Writings*, and delivers them to the *Clerk* at the *Barr*: With
all

all which, great *Aviſandum* is made; but if the *Commiſſion* be not Reported, the *Term* will be *Circumduced*, without reſpect to the *Inſtruments* taken upon the account thereof, which cannot be conſidered by the *Ordinary* in the *Outter-houſe*; For, if there be a default on either *Party*, which hindered the *Commiſſion's* taking effect, that muſt by a Bill be repreſented to the whole *Lords*, who, upon conſideration thereof, will either renew the *Commiſſion*, or confirm the *Circumduction*, as they ſhall ſee *Cauſe*.

The *Ordinary* Excuses for not Reporting *Commiſſions*, are, that the *Commiſſioners* kept not the *Dyet*. 2do. That they reſuſed to Examine the *Witneſſes*, becauſe the other *Party* was abſent, or becauſe the *Witneſſes* were not receivable, and Laboured under one or other of the *Impediments* abovementioned, where it is to be obſerved, that in *Questions* ariſing concerning the capacity of *Witneſſes* the common *Rules* of *Exceptions* above ſet down are to be obſerved by the *Commiſſioners*, but if extraordinary *Objections* be alledged, they ought to mention the ſame, and leave the *Conſideration* thereof to the *Lords*, and receive the *Witneſs cum nota*; If the *Commiſſioners* have been faulty, the *Lords* will renew the *Commiſſion* to them, or to others, and ordain the *Witneſſes* rejected to be received, and Examined upon all, or any of the *Interrogators* contraverted,

as

as the *Lords* shall find *Relevant*, or otherwise, ordain the *Witness* to be Examined before themselves, likewise, if any unseen Accident have befallen a *Party* or *Witness*, which hinders them to compear, the *Lords* will grant a new *Commission*, and in the mean time prorogate the *Term* in the *Act*.

When *Witnesses* are to be Examined before *Commissioners* in the Country, first *Diligence* is allowed to cite them to compear before the *Commissioners* at the place, and on the *Day* appointed by the *Commission*, and if on that *Day* they compear not, at calling the *Act* and *Commission* before the *Lords*; A second *Diligence* should be craved against the *Witnesses* for forcing them to compear before these, or other *Commissioners*, at the same place, or before the *Lords* themselves, and upon another *Day* then prefixed, which is usually granted, if care be not taken, to have the *Probation* at this second *Term* finished, at calling the *Act* thereafter, *Circumduction* can no longer be stopt.

When no *Commission* is Reported, the *Term* is *Circumduced*, and *Decreet* pronounced, and the Excuse for not Reporting, and *Instruments* taken upon the default, either of *Commissioner* or *Party* cannot be considered by the *Ordinary* in the *Outter-house*, but they are only proper to be laid before the *Lords* in presence by *Bill*.

If

If the *Commiſſion* be duly Reported, *Aviſandum* is made with the *Writings* produced, or with the *Depoſitions* of *Parties* or *Witneſſee*.

When at pronouncing the *Act* by the *Ordinary*, a *Day* was taken by a *Procurator* for producing the *Party* to *Depone* before the *Lords*, and no *Commiſſion* ſought, if betwixt pronouncing the *Act*, and the *Term* Assigned, the *Party* become *Infirm*, *Sickly* and unable to *Travel*, upon *Representation* thereof, duly *Atteſted* by a *Phyſician*, and the *Minifter* of the *Paroch*, or, if the *Church* be *Vacant*, by two of the *Elders*, in a *Declaration* upon *Soul* and *Conſcience* ſigned by them, the *Lords ex officio* will grant a *Commiſſion*, and prorogate the *Term*.

The *Commiſſion* duly executed, at *Calling*, is delivered over the *Barr* to the *Clerk*, and *Aviſandum* made to the whole *Lords* with the *Depoſitions*, in the ſame manner, as if they had been taken before the *Lords* themſelves.

In extraordinary *Cases*, and in ſeveral particular *Actions*, as in *Improbations*, and proving the *Tenor* of *Writings*, when *Witneſſes* are to be *Examined* upon the *Truth*, or *Falſehood* of a *Subscription*, and the like ; or upon the *Contents* of a *Writing*, and their having ſeen the ſame, the *Lords* Refuſe to grant *Commiſſions*, but Ordain the *Witneſſes* to be *Examined* before themſelves, in preſence of the whole *Lords*, or before one of their *Number* added
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to one of the *Ordinarys* on *Oaths* & *Witnesses* jointly, or before the two *Ordinarys* themselves.

At pronouncing the *Act* of *Litiscontestation*, an *Alledgance*, being found *Relevant* and *provable pro ut de Jure*, may be proven by *Writing*, *Witnesses*, or *Oath* of *Party*, and if the *Party* intended to prove, by *Witnesses*, or *Writing*, a *Diligence* must be sought, and granted: Which he may use, if he please, and although *Diligence* has been made use of, in order to prove the *Exception*, yet before the *Conclusion* of the *Cause*, and at *Calling* the *Act* in *termino*, he will be allowed to refer the same to the other *Party's* *Oath* of *Verity*, and until he *Depone*, the *Term* can never be *circumduced*, nor *certification* granted; Yea, albeit an *Alledgance* be admitted to the *Probation* of a *Defender*, who has cited *Witnesses*, or *Havers* of *Writings*, for that effect, the *Pursuer* may hinder the *Witnesses* to be received, if he refer the *Matter* to the *Defenders* own *Oath*, which is done by a *Petition*, and *Representation* to the whole *Lords*: But if *Witnesses* have been *Examined*, the *Parties* are not allowed to alter their *Mean* of *Probation*, except when the *Depositions* are *Negative*, the *Witnesses* *Deponing* that they know nothing of the *Matter*, then the *Lords* for *expiscating* the *Truth*, and that every one may get their own, will upon a *Petition* allow *Oath* of *Party* to be taken upon the *Lybel* or *Defence*.

When

When two *Actions* are, *inter easdem personas, de eadem re, & eodem modo agendi*, or when they are, accessories the one to the other, or if the *Actions* be of the same kind, though at the instance of different Persons, yet if they be, against one and the same *Defender*, as in *Actions* upon the *Passive Titles*, and other general *Processes*, the *Pursuer* may Repeat the *Probation*, out of one *Process* into another. And a *Warrant* should be sought for transmitting thereof, which will be granted, at any step of the *Process*, if the *Depositions* be in the custody of the *Clerks of Session*; But if they be in an *Inferior Court*, at pronouncing the *Act*, *Diligence* should be sought, and Executed against the *Clerk*, for production thereof: Or, the *Pursuer* may cite the same *Witnesses*, if alive, to be Examined before the *Lords*.

It is to be observed in *Acts* before *Answer*, Assigning a *Term* for proving *Alledgances*, albeit no *Probation* be adduced, and *Circumduction* for not proving, *Admitted*, Yet a *Decreet* thereon cannot be *Extracted*, because the *Relevancy* of the *Lybel* and *Summons*, is not determined in the *Act*, which must be done by the *Lords* in presence; wherefore the *Clerk* *Writes* on the *Margine* of the *Act*, thus *Circumduces* the *Term* against the *Defender* for not proving, and grants *Great Avisandum*, with the former *Debate*; and upon the *Pursuer*, or his *Agent's Application* to the *Clerk*, and upon

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paying to the *Collector* of the *Dues*, for a *Warrant* to *Enroll*, the *Clerk* Grants a *Warrant* in *Writing* for *Enrolling* the *Cause* in the *Roll* of *Ordinary Actions* for the *Inner-house*, which being accordingly *Enrolled*, is determined in *Courfe*.

The *Avisandum* made with the means of *Probation*, is called a *Great Avisandum*, for thereby the *Cause* is concluded, and regularly is no more to be *Judged*, or cognosced by a single *Ordinary*, but goes, either to be summarly *Advised*, or *Enrolled* in the *Inner-house Rolls*, and to be *Judged* by the whole *Lords*.

If the *Mean* of *Probation*, be *Oath* of *Party*, and marked clear by the *Ordinary* who took the *Deposition*, after *Avisandum* in the *Outter-house*, a *Bill*, Representing the *State of the Process*, the *Tenor* of the *Oath*, and it's being marked clear by the *Ordinary*, may upon any *Saturday* thereafter be presented to the whole *Lords*, craving to have the *Probation Advised Summarly*, that is, without abiding the course of several *Rolls*, which *Desire* is always granted.

These *Petitions* must be *Enrolled* in a *Roll*, lately Appointed by the *Lords*, and kept by the *President's* chief *Servant*, a *Copy* of which *Roll* is Posted on the *Wall* of the *Session-house* on *Friday Afternoon*, that all *Persons* may know the *Oaths* and *Processes* to be *Summarly Advised* on the *Saturday* ensuing, for the *Petitions* are

Read

Read and the *Probation Advis'd*, according to their Order of ſtanding, and *couſe* in that Roll.

The *Aviſandum* with the *Probation* being upon the *Aſt* marked by the Clerk, in a ſpecial Signature, and Sign'd by the Ordinary, a *Warrant* is given, by the Clerk, for *Enrolling* thereof in the *Inner-houſe Rolls*, the Clerks *Dues* being firſt pay'd to the *Collector*, and marked on the *Aſt*, conform to the *Regulations*; So that next *Saturday*, or any other *Saturday* thereafter, The *Purſuer* producing to the Keeper of the *Inner-houſe Rolls*, this *Warrant*, The *Cauſe* is accordingly *Enrolled*.

If the *Probation* be led upon an *Aſt* of *Litiſconſtation*, ſo that the *Relevancy* of the *Lybel* and *Alledgances*, are already determin'd, and that the *Queſtion* is, if, or not, the ſame be proven, then the *Cauſe* muſt be *Enrolled*, in the Roll of *Cauſes* to be prepared.

The *Cauſe* being thus *Enrolled*, the *Proceſs* is given to a Clerk of the *Inner-houſe*, who makes a *State* thereof, which is, an abreviat of the whole *Proceſs*, mentioning the nature of the *Cauſe*, and Names of the *Purſuer* and *Defender*, what *Points* by either *Party* were ordain'd to be proven, and by what manner of *Probation*, conform to the *Interloquitor* in the *Aſt*, and that for proving thereof, ſuch *Writings* containing ſuch *Claufes*, are produced, ſuch *Witneſſes* being *Examined* thereupon, have De-
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poned in such manner, and so furth narrating what is done in the *Procefs*, without giving Judgement for, or against, either *Party*: The particular parts of the *Oath*, or of the *Writings* insisted on, and referred to in the state, are marked.

Every *Tuesday* and *Thursday* Afternoon, The *Ordinary* appointed for preparing *Causes*, comes to the *Session-house*, where he is attended by the *Inner-house Clerks*, who bring with them the *Processess* to be prepared, and the *States* thereof, as made by them, which the *Ordinary* compares with the pieces, as the *Act*, *Writings*, or *Depositions*, and at this *Preparing*, both *Parties Procurator's*, are by a *Macer*, called to compare and make *Objections* against the *State*; For it is Statuted, that the *Advocats* for the *Parties*, shall be allowed to *Object* against the *Report* to be made, and to make their *Objections* within fourteen *Days* thereafter, which *Objections*, with *Answers*, are subjoined to the *Report*; if this be neglected, the *Party* neglecting, will not be heard, until he consign five *Dollars*: And further, that at *Advising*, no *Objection* be made against the *Act*, but against the *Report*, as to the *Points* proven or not proven.

If the *State* be not rightly formed, the *Ordinary* mends the same, keeping still as near as can be, the *Words* of the *Clauses*, in the *Writings*, or *Depositions*, and orders the *Writing* thereof

thereof *in Mundo*: when nothing can be said against the State, it is Signed by the Ordinary for preparing Causes, and he modifies the Dues of the Clerks for their pains, which must be payed to the Collector, after which, it is said to be Prepared, and being accordingly marked, the Cause goes to the Roll of Concluded Causes, which may be Enrolled upon any Saturday Afternoon thereafter: But this prepared State or Report is to ly in the hands of the Clerk to the Process, a Week before Advising, and to be Patent to all Parties.

By the Regulations 1695. It is Enacted, That in all Causes, where Probation is admitted, and made by Writing, or by Witnesses, the Lord Ordinary for Concluded Causes, who prepares a Process for Reporting, may consider the said Probation; and if he find it clear, he may mark it to be so; In which Case, the Probation and Cause is appointed to be Advised Summarly, without Order of the Roll, which is done by a Petition, as in the Case of Advising an Oath of a Party marked clear.

If the Probation be not clear, the Process must be Enrolled, in the Roll of Concluded Causes, and the Cause is called, according to the course of that Roll, upon the Day appointed for calling these Causes, which ordinarily is Saturday, and also in the Afternoon of other Days, as the Lords shall think fit to meet, and both Parties Procurators are, by a Macer, called to the Inner-house Barr; At this Calling,

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the Pursuer may debar the *Defender's Procurator*, and hinder him from Pleading, if he has not payed his proportion of the *Dues* for preparing, and Inrolling, conform to the *Additional Regulations* in the Year 1696: Thereafter, the Clerk reads the *prepared State*, and if any Party has any thing to Object against the same, they're instantly heard.

The *Objections* and *Alledgances* proponed at Advising, are generally against the *Writings*, and arise from the *Writings* themselves, as visible Nullities in them, wanting *Witnesses*, *Writer* or *Witness* not named, or designed, *vitiating in substantialibus*, &c. or the *Writings*, though formal, may be elided by competent *Exceptions*, which may, with effect, be propounded in that *State of the Process*.

If in the *Act*, there be a Reservation of *Objections contra producenda*, though these be in Fact, and cannot be instantly verified, they'll be admitted, and a *Term* Assigned for proving thereof.

As also new *Defences* and *Alledgances*, though formerly competent and omitted, if *Relevant*, may be effectually proponed, when instantly verified; And such as are newly emergent, and lately come to knowledge, though not presently proven, will be received, and admitted to *Probation*: In like manner, there may be *Reductions* of the *Act* of *Litiscontestation*, and the *Reasons* may be instantly discussed,

and found *Relevant*; yet such emergent *Alledges* are commonly reserved to be afterwards considered in a *Reduction*, or *Suspension* of the *Decreet* then to be pronounced.

Tho' the *Partys* have not proven all the *Points* in the *Act*, yet the *Lords* will, at *Advising*, sometime find as much proven, as may serve, and be sufficient to effectuat the *Proponer's* intention, and if, either, there be be a *semipleme Probation*, they'll, for further manifestation of the Truth, take the *Oath* of either *Party*; Or, if some *Points* are not clear, they'll ordain further *Probation* to be adduced, by both, or either *Party*.

Of all *Objections*, that of *Falseness* is the last, when the *Party* *Alledges*, the *Writings* produced are false, and feigned, which the *Lords* will either, *Repell* as incompetent in this *State of the Process*, (Especially, if the *Writings* have been some time since in the *Clerk's hands*, and not quarrelled, they reserve *Action of Improbation* to be pursued in the ordinary way) or else they'll admit *Improbation*, by way of *Exception*, and discuss the *Reasons* instantly, and in the mean time sist procedure in the principal *Cause*, in which case, the *Lords* do ordain the *Proponer of Improbation*, to consign in the *Clerk's hands*, a certain Sum as a pledge that he will prosecute his *Alledgeance*, and they'll ordain the other *Party*, to *bide by the Writing*, as a true Deed, and truly Subscribed,

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ed, and on the Day and Date thereof, &c. which is done, by a Declaration under his hand, and for both these purposes, a Day is Assigned to either Party, at which time the Improver consigns in the hands of the Clerk to the Process 40 lib. Scots, as the Ordinary Sum in these Cases, and the other Party Compears Judicially before the whole Lords (if the Cause be concluded, or Discussing in the Inner-house,) or before the Ordinary and abides by the Writing, either simply, or qualifiedly, as the Lords see cause to admit: Whereupon the Clerk Writes a Minute upon the back of the Writing quarrelled, anent the Parties bidding by the same which must be Subscribed, first by the Party, and by the Lord President, if the Cause be in the Inner-house, or by the Lord Ordinary, in the Outer-house, if the Paper be abiden by in the Outer-house: The bidding by simply, is the standing by it, as it is produced, without any quality what ever: The bidding by qualificate, is when the Party does not pretend to support the Writing simply, as it stands, but, not being solicitous, about its Verity, or Falseness, maintains it not, as being his own Deed, so that, if it should be improven, he has no accession to the Falseness, But offers to stand by it, as a Paper, truly found in his Predecessors Chist, or delivered to him, by his Agent, or the like, After which, the Process proceeds, as in the ordinary

ry *Action of Improbation*, of which in another place.

But the *Lords* seldom allow one, to abide by a *Writing Qualificate*, tho' after abiding by *simpliciter*, the *Party* is not hindered to *Protest* that he maintains it, in such and such *Terms*.

Both *Parties* having proponed what they had to say, at *Advising*, the *Lords* consider, the *State of the Process*, *Objections* and *Answers*, and finding, the *Points Litiscontested* upon, proven or not proven, they pronounce *Sentence*.

If the *Defender* fail in proving a peremptor *Exception*, he is condemned in the whole *Lybel*, neither needs the *Pursuer* prove any part thereof, for by proponing a *Peremptor*, the *Defender* is understood to have confessed the *Lybel*, except he propone his *Defence*, denying the *Lybel*.

When *Processes*, in which *Acts* before *Answer* are pronounced, and other *Actions*, competent to be only determined by the whole *Lords*, are called in the course of the *Inner-house Roll of Ordinary Actions*, the *Advocats* plead not only, for, and against, the *Relevancy* of the *Lybel*, but also, for, and against, the *Probation*, for both must be in their *Pleadings*, and under the consideration of the *Judges*: If the *Cause* be intricate, or the *Probation* long, or various, the *Lords*, at first *Calling*, will recommend to the *Weeks Ordinary*, for preparing

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paring *Concluded Causes*, or to any other of their Number, to make a *State* of the whole *Process*, and they appoint a *Dyet*, for *Hearing Parties*, or continue it in the *Roll*, By which method, the Matter being made succinct, will appear more distinct, than it would do from the *Verbal Pleadings*, and ordinarily there is a *Copy* of the *State* put into the *Lords Boxes*, the Night before the *Hearing*, and at Calling the *Cause*, the *Lords* proceed, as in other *Disputes* in presence, the *Form* whereof is given before.

The *Sentence* of a *Judge* is either *Interlocutory*, or *definitive*; *Sentence Interlocutory* is, *What the Judge pronounces. during the dependence of the Cause, touching the Lybel, Exception, Reply, &c.* and is so called, because *Judex interim loquitur viz. pendente causa principali*; However the word *Interlocutor*, does in general signify all manner of *Sentences and Orders* of a *Judge*, and is so made use of in our *Style of Court*, and *Law-Books*: *Sentence Definitive*, or a *Decreet* puts a final end to the *Cause*, according to the *Probation*, and is either *Condemnator*, when the *Defender* is condemn'd, or *Abolvitor* when the *Defender* is *Assoilzied* or *acquitted*, concerning which, the *Ancient Brocards* are,

Actore probante

The Pursuer proving

{ His Lybel or
Answer, &c.The Defender is Con-
demned.*Reus Condemnatur.**Reo non probante.*

The Defender not proving.

{ His Defence or
Reply, &c.*Actore non probante.*

The Pursuer not proving.

{ His Lybel or
Answer, &c.The Defender is affoi-
zied or acquitted.*Reus absolvitur.**Reo probante.*

The Defender proving.

{ His Defence
or Reply, &c.

When a *Party* is not satisfied with the *Sentence* and *Decree*, and Purposes to *Reclaim*, a *Petition* for stopping *Extract*, or altering, must be presented within the space of six *Sederunt* Days, after pronouncing of the *Decreet*, otherwise the *Lords* have declared, they will not receive the same; Because, when any longer time interveens between the *Sentence* and *Petition*, the *State* of the *Process*, and grounds upon which they did proceed, being out of mind, they are forced of new to peruse the *Process*, and *Probation*, which, with multiplying *Bills* on the same *Points*, occasions de-
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lay of *Justice*: And therefore, as was said formerly, they Discharge their *Clerks* to present any *Bill, Reclaiming* against *Interlocutors in praesentia*, after the said space, and to receive any more, than two *Petitions* from the same *Party*, after the first *Reclaiming Bill*.

The *Decreet* being pronounced by the whole *Lords*, and the *Sentence* or *Interlocutor* being Signed by the *President*, the Principal or *Inner-house-Clerk* puts the same into his *Minut-Book*, and likewise causes put it into the general *Minut-Book*, so that Twenty four Hours after the *Book* is Read publicly in the *Session-house*, the *Decreet* may be *Extracted*, if no stop be put thereto, which can only be done, by Warrant from the whole *Lords*; And this *Decreet*, if it bears a *Decernitor*, to pay a *Sum*, or to perform any *Fact* or *Deed*, contains Warrant for *Letters of Horning*, which, with all other *Execution*, may be used thereon, till the *Decreet* be *Suspended*: for all *Decreets* whatever, also well these, pronounced by the *Lords*, either in *Inner* or *Outter-house*, as these pronounced by any ordinary *Inferior Judge*, for valuable and relevant *Reasons* and *Considerations*, may be *Suspended* by the *Lords* of *Session*, which is done in manner following.

TIT. III.

The Form of Process in Suspensions

SO soon as the Decreet is Extracted, and delivered to the Party, the Judge Pronouncer thereof is Exauctorated, and has no farther Jurisdiction in the Cause, i. e. Power to alter Sentence or to stop Execution upon his Decreet: However, the Lords of Session have Power, to review their own Sentences, in Acts or DECREETS; And, for good Grounds and Reasons, to Suspend and Reduce the same: Which is a Priviledge, that no other Court, in Scotland, enjoys; Except That the Judge of the High Court of Admiralty, and the Commissars of Edinburgh, can in certain Cases, Reduce DECREETS of Inferior Judges of Admiralty, and of Inferior Commissars.

When a Party, who is pursued, either before an Inferiour Court, or before the Lords of Session, finds himself, by Sentence or Interlocutor

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Definitive, any manner of way, hurt, or prejudged, He presents to the *Lords of Session* a *Bill*, shewing, that such a Person, before such a *Judge*, or before themselves, has obtained a *Decreet*, and, by vertue of *Letters of Horning*, Raised, or to be Raised thereupon, has charged, or intends to charge him to obey the same, most wrongously and unjustly, for such and such *Reasons*, as are at length mentioned in the *Bill*, and are founded on, either the generality, or the Informality of the Charge, or the Iniquity of the *Judge*, or necessar Absence of the *Suspender*; And therefore craving, that the *Lords* would Suspend all Execution, upon the foresaid *Decreet*; In the mean time, the *Suspender* offers Caution, that he shall obey the Charge, in case the *Lords*, at discussing the *Reasons* of Suspension, shall find, that he ought so to do: Or, he offers to consign, what is demanded of him.

The *Bill* is drawn and sign'd by a *Writer* to the *Signet*, in the usual Form, and delivered to the *Clerk* of the *Bills*, who, on the back thereof, *Writs* the Day, on which it is presented, and carries it to the *Ordinary* to the *Bills*, who considers the *Reasons* of Suspension; And, finding them, either not Relevant, or not Instructed, Refuses the *Bill*, and on the back thereof, marks with his own hand, That the *Bill* is Refused, Which *Bill* the *Clerk* must keep, and on the back thereof, mark with his own hand, what *Writings* were

duced for Instructing the *Reasons*, And, if the same *Bill*, or any new *Bill of Suspension* upon that Matter, shall be desired to be presented to another *Lord* being *Ordinary* at the time, the *Clerk* shall exhibit to his *Lordship* the *Bill of Suspension* formerly *Refused*, In which case, the *Ordinary* is not to pass the *Bill*, untill it be presented and Reported to the whole *Lords* in time of *Session*, or to three *Lords* met together in time of *Vacance*: But the *Ordinary* may, by himself alone, reject the *Bill*. However, if he lay the *Reasons* before the *Lords*, upon his *Report*, the *Bill* is either *pass* or *Refused*.

It is to be observed, that these *Bills* are ordain'd to be presented, only by the *Clerk* or his *Servant*, who are prohibited to write any date upon the deliverance of any *Bill*, except in presence of the *Ordinary*, And that it be the true date, whereon the same is Sign'd: And the *Clerk* is ordain'd to make a *Minut Book*, both of *Pass* and *Refused Bills*, by the Alphabetick order of the *Parties Surnames*; which he is to make Patent to any *Charger*, that shall desire to see the same, *gratis*.

If the *Ordinary* *Refuse* to *Report* the *Reasons*, the *Suspender* may, in a *Petition* to be Read by an *Inner-house Clerk*, Represent to the whole *Lords*, his *Reasons of Suspension*, and that they were refus'd by the *Ordinary*; and crave, they may be reconsidered, and that his *Bill* may pass:

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pass, which desire is either granted or refused.

When the *Bill* is refused by an *Ordinary*, or by the *Lords* in presence, a new *Bill* may be form'd, containing either *Additional Reasons* of *Suspension*, eiked to these in the former *Bill*, or *Reasons* wholly new, Which the *Ordinary* may consider, and find *Relevant*, to procure *Suspension* of the *Charge*.

If the *Reasons* consist in *Fact*, or relate to *Matters* doubtful, the *Ordinary* commonly Ordains the *Charger* to see and *Answer* the *Bill*, and stops *Execution* for some time, not exceeding a *Month*, which is likeways done, when the *Bill* is past, in case the *Party* concerned apply to the *Ordinary* for a *Hearing*, and this deliverance is written at the foot of the *Bill*: And that the other *Party* concern'd may *Answer* the *Bill*, a *Copy* of it is left with the *Servants* in the *Bill-Chamber*, who delivers the same to the *Charger*, or his *Writer*.

During the Continuation of the *Sist* of *Execution*, the *Clerks* in the *Bill Chamber* are in *peffima fide*, to writ on a *Bill of Caption*, or present it to the *Ordinary*; But if either the *Suspender* be in danger to be denounced, or if the *Bill of Caption* be past, he in order to stop the *Registration* of the *Horning*, or expeding the *Letters* of *Caption* must intimate the *Sist* of *Execution* to the *Charger*; or (in case he be not at hand) to the *Keeper* of the general or
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particular Register of Hornings, or to the Keeper of the Signet.

If the Bill of Suspension be past, Letters are thereon expedite in the same way as has been said concerning Advocations, with the following differences: If a Decree *in foro*, before the Lords, a second or posterior Protestation, or a Decree of the High Court of Admiralty in Causes maritime, be craved to be Suspended the Suspension thereof must be presented, to the whole Lords in the time of Session, and to three met together, in time of Vacance; the Deliverance bearing, that they were met together.

A Decree before the Lords is said to be merely in absence, when the Defender has never compeared by his Procurator, and proponed either Dilator or peremptor Defences: And a Decree before an Inferior Court, is said to be in absence, where a Defender has never compeared personally, nor by a Procurator having a Written Mandat, or producing such of the Defender's Writings, in relation to the Action, as the Procurator cannot be presum'd to have had, unless he had been entrusted and employed by the Defender.

A Decree of any Judge is said to be *in foro*, or *in foro contradictorio*, where Defences either dilator or peremptor have been propon'd, and the Dispute insert, albeit the Advocat thereafter pass from his Compearance: And se-

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cond *Protestations* are in this Case considered as *Decrets in foro*.

Decrets in foro contradictorio before the Lords are not to be *Suspended*, for *Reasons* coincident with the *Defences Repelled* in the *Decreet*; or, which were competent and omitted there.

That it may be known to the *Ordinary* on the *Bills*, what *Decrets* before the Lords are *in foro*, what not, the *Keeper* of the *Minut-Book* makes up a *Book* of *Decrets in foro*, each Day given him by the *Clerks*, expressing the Names of all *Defenders*, for whom there is no *Compearance*: In like manner second and posterior *Protestations* are insert in this *Book*; and the *Clerk* of the *Bills* gets a double of this *Book*, of *Decrets in foro*.

Protestations are not *Suspended*, but upon *Consignation* of 8 *lib.* if the Sum *Suspended* be 100 *Merks*, and if the Sum be above 100 *Merks*, or not a liquid Sum, 10 *lib.* must be consign'd: And the *Suspension* bears, that it is the second *Suspension*, and so forth; And if the *Suspension* of a *Protestation* be past, and the deliverance of the *Bill* bear not, that the same is the second *Suspension*, and so forth of any subsequent *Suspension*, The Lords have declared, they will recall the *Suspension*, Albeit the same be expedie at the *Signet*.

When any Person that is in Prison, intends to give in a *Bill of Suspension*, and to crave a *Charge* to be sett at Liberty he must make previous

vious Intimation thereof to his Creditor, at whose instance he is incarcerated or arrested in Prison, personally, or at their Dwelling place, by a *Notar* before *Witnesses*; Mentioning the time, when the *Bill* shall be presented, in case the *Creditors* be within the Kingdom for the time, And this *Instrument* of Intimation to the *Creditor*, under the *Notar's* hand, must be produced with the *Bill* of *Suspension* and *Charge* to set at Liberty, when the same is presented to the *Ordinary* on the *Bills*; Otherways the *Bill* cannot pass: And this *Intimation* must be special in the time, when the *Bill* is to be presented, being within the latitude of a *Week*, that the *Creditors* may be at a certainty, when to attend the same.

For hindering the presenting of *Suspensions* upon *Calumnious Reasons*, refer'd to the *Charger's Oath*, If the same be found *Relevant*, and if the *Charger* be present, the *Ordinary* is ordained to take his *Oath* upon the *Verity* of the *Reasons*, in order to the passing or refusing the *Bill* of *Suspension*, But if the *Charger* be absent, and the *Suspender* present, the *Ordinary* must take the *Suspender's Oath* of *Calumny*, that he had just ground to propound the *Reason* of *Suspension*: And if the *Bill* do pass, the *Charger* not being present to *Depone*, the *Ordinary* is to add to the *Deliverance*, this Quality, That the *suspender* shall be *Lyable* in the whole *Expences*, the *Charger* shall

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Depone upon, without Modification, in case the *Letters* be found orderly proceeded.

And because *Parties* and their *Procurators* are accustomed to procure *Suspensions*, upon pretence, that the Copy of the *Charge* given by the *Messenger*, is *General*, or *Informal*, and for verifying thereof, do produce *Forged Copies*, and sometime *Forged Writings*, for instructing *Reasons* of *Suspension*, which they never intend to make use of, and therefore suffer *Protestation* to pass: For remedying whereof, the *Lords* have Declared, that if the *Charger* shall produce such a *Suspension*, or *Duplicate* thereof under the hand of the *Keeper* of the *Signet*, that besides the ordinary *Protestation-Money*, they will modify large *Expences* to the *Charger* for his delay, and in case at discussing of the *Suspension*, the *Charge* and other *Writings* to which the *Reasons* relate, be not produced, the *Lords* will hold them *False* and *Forged*, and will Modify large *Expences* to the *Charger*, without prejudice to insist against the *Forger* of the *Copies* and *Writings*: And when any principal *Written Copies*, or *Instruments* of *Nottars*, are given in with a *Bill* of *Suspension*, for instructing the *Reasons* thereof; The *Ordinary*, who passes the *Bill*, is ordained to mark these on the back, that, at discussing the *Suspension*, these *Writings* may be reproduced; otherways the *Party* shall not be heard upon any of his

Reasons, and shall pay large *Expences* to the *Charger*, beside the *Protestation-Money*: Because it is presumed, that the *Writings* were false being made use of, only for delay, there being a considerable time before the *Suspension* be discussed: And the *Clerk* to the *Bills* is appointed, to detain in his own hand any *Instruments* of *Nottars*, and *Copies* of *Writings* produced; the same being likewise marked by the *Ordinary*, who pass the *Bill*, and he is allowed to give up the same, upon *Receipt* to be granted by the *Charger*, that they may be reproduced, at the *Discussing* of the *Suspension*.

No *Suspension* of a *Charge* for the *King's Annuity*, or *Excise*, can pass; except in presence of the whole *Lords* in the time of *Session*, or by three *Lords*, in time of *Vacance*.

No *Suspension* can be past, against a *Bishop*, *Minister*, or *Master* of *University* or *Colledge*, of any *Charge* for their *Dues*, on special *Decrets*; except upon production of *Discharges*, or upon *Consignation*, and (if the *Rents* Charged for be *Victual*,) of 100 *Merks* for each *Chalder*, without prejudice of an higher *Modification*, at discussing: And where *Bills* of *Suspension*, against a *Charge* upon general *Letters*, are presented, they must first be shoven to the *Charger*: And if either the *Charger* or *Suspender* be found *Calumnious*, the *Lords* of *Session* may modify a fifth part of the *Sum* for *Expences*; But when the *Sum* is small, the

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Twenty *Merks* being allowed to Preachers, who are not settled in Churches, for their Preaching each Lord's Day, in Churches Vacant upon the Northside of the *Water of Forth*, out of the first of the Vacant Stipends of the Respective Churches, at which they shall Preach, by the Appointment of the Presbytry, within whose Bounds the same do ly; It is Statuted, that no *Suspension* shall pass against these Preachers, charging for Payment of the said Twenty *Merks*, save upon Consignation, with this Declaration, that if, at discussing the *Suspension*, the *Letters* be found orderly proceeded, the wrongous *Suspender* shall be decerned in a fifth part more.

Upon passing *Bills* of *Suspension*, of a Charge for Payment of *Protestation-Money*, the *Lords* order Consignation of the *Protestation-Money* in the Hands of the *Clerks* to the *Bills*.

And when *Suspension* is craved of *Deereets* of *Exhibition*, The *Ordinary* at passing the *Bill*, takes the *Suspender's Oath*, concerning his having any of the *Writings* called for by the *Charger*; And Ordains such as he acknowledges to have, to be consigned in the hands of the *Clerks* to the *Bills*.

So soon as a *Sist* of *Execution* is obtained, it must be Intimated to the *Charger*, under the form of *Instrument*, before a *Notary* and *Witnesses*;

to the effect, he may not proceed to *Denouciation, Caption, &c.* till the Days of the *Sist* expire; In which time, he is to give in *Answers* to the *Reasons of Suspension*, to be considered by the *Ordinary*.

When upon this Intimation, the *Charger* gives *Answer* to the *Reasons of Suspension*, after consideration of both, the *Bill* passes; the *Charger* is in *Law* presumed to know thereof, and is *in pessima fide* to proceed to *Execution* for a Fortnight thereafter; which time is allowed to the *Suspender*, to make *Consignation* or to find *Caution*, according to the *Ordinary's* deliverance. Nevertheless, for farther Security, he may intimate the passing of the *Bill*, with the first conveniency: And if the *Charger* by a nimious *Diligence*, should proceed to poind, or other *Summar Execution*, before the *Bill* could be conveniently intimated, he'll be guilty of a *Ryot*.

If the *Bill* be not expedite within Fifteen Days after passing thereof, Application is made to the *Ordinary*, for continuance of the *Sist* for some longer time, not exceeding a Moneth from the date of the first presenting, that the *Suspender* may seek out a sufficient *Cautioner*: And this *Sist* must be intimated.

An *Ordinary* may continue a *Sist* from time to time, for the space of a Moneth, to be counted from the Day, on which the *Bill* was presented, and no longer; But if the *Suspender* stand

stand in need of a longer *Sist*, he uses to present a new *Bill* of *Suspension* upon the same *Reasons* contained in the former *Bill*, and gets thereby a new *Sist* for a competent time.

When *Suspensions* are past, upon *Consignation* of the Money charged for, the Money is delivered to the *Clerk* of the *Bills*, for which he is in use to get one *shilling* in the pound, one half at the *Consignation*, payed by the *Consigner*, and the other half at the *Delivery*, payed by the *Uptaker*: But when the *Sums* consigned are great, *Parties* use to compound with the *Clerk*, and he takes less than the *Twentieth Penny*: Albeit the *Sum* charged for, or at least the principal *Sum* be consigned, yet the *Clerk* must take a *Bond* of *Cautionry*, for *Payment* of what *Expences* of *Plea* shall be *Decern'd* by the *Lords*, at discussing the *Reasons* of *Suspension*.

When *Caution* is to be found, the *Clerk* to the *Bills* must take care, that the *Cautioner* be sufficient, and he cannot refuse one, that is so; For he will be lyable in the *Parties* Damage, as well when he refuses a *Cautioner*, who is sufficient, or is holden and reputed be to such, as when he receives an insufficient one.

If the *Condition* of the *Cautioner* be doubtful, or unknown to the *Clerk*, a *Person* more Responsal and unexceptionable, Attests, and Declares him to be sufficient; And the *Clerks* to the *Bills* are Ordained, to take the *Attester's Bond*

as *Cauti oner* for the first *Cauti oner* to be lyable *subsidiarie* in their order, as fully as the first *Cauti oner* himself, with certification, if any *Attestation* be taken otherways, the *Clerks* shall be lyable to the *Parties*, for their *Damnages*.

When the *Suspender* cannot find a sufficient *Cauti oner* or *Attester*, to the satisfaction of the *Clerk* to the *Bills*, he presents *Juratory Caution*, that is, he offers such *Caution* as he can get, and shews himself ready to *Swear* and *Depone*, that he can find no better; concerning which, the *Lords*, considering the Inconveniencies ensuing from the *Chargers* not getting notice that such *Caution* is offered, thereby wanting opportunity to object against the same, They Ordained, that when any Person is to give in a *Bill* of *Suspension*, to be expeded upon *Juratory Caution*, he should make, before a *Notar* and *Witnesses*, previous Intimation thereof (bearing the particular Day) to the *Charger* Personallly, or at his Dwelling-house, if within the Kingdom; And that the *Instrument* of *Intimation* be produced with the *Bill*, which is to be given to the *Clerk*, within six Days after the Day mentioned in the *Instrument*; otherways, that a new *Instrument* be taken, before the *Bill* be presented; And that the *Ordinary* on the *Bills* in time of *Session*, before *Reporting* the *Bill*, and three *Lords* in time of *Vacance* before passing thereof, cause publickly call the *Charger*, against whom the said *Instruments*

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are produced : And the *Suspender* must *Depone*, if or not, he have Lands or Sums of Money belonging to him, and that he make condescendence thereof, and *Depone*, he has none other ; All which is to be part of his *Written Oath* : And the *Suspender*, before expedeing of the *Bill*, must consign in the hands of the *Clerks* to the *Bills*, valid and sufficient *Dispositions* and *Assignations* of the said Lands and Sums of Money, at the sight and appointment of the *Lord Ordinary* : And in respect, *Parties* do offer sufficient *Caution* in the *Bill* of *Suspension*, to the effect, the same may the more easily pass, and thereafter apply for a *Supplement*, whereas, if the *Ordinary*, who past the *Bill*, had been acquainted, that sufficient *Caution* was not to be given, he would have been more strictt in finding the *Reasons Relevant* for passing the *Bill* ; Wherefore, it is Ordained, that no *Bill* of *Suspension* bearing offer of sufficient *Caution* shall be expedie upon *Juratory Caution*, but the *Suspender* must declare in his *Bill*, that he offers *Juratory Caution* ; To the effect, the *Ordinary* may consider the *Reasons* with respect thereto ; And if the *Bill* do pass, the *Suspender* must compear Personally, before the *Ordinary* on the *Bills* and *Depone*, for *Oaths* in *supplement* are Discharged to be taken by *Commission*.

Juratory Caution cannot be received in a *Suspension* and *Charge* to set at Liberty, while the *Suspender* is in Prison.

The *Cautioner*, being approven by the *Clerk to the Bills*, signs and delivers him a *Bond of Cautionry*, whereby the *Cautioner* obliges himself and his Successors, that the *Suspender* shall give due obedience to the *Charge*, and shall likeways pay the *Expences of Plea* that shall be decerned, in case the *Lords*, at *Discussing* of the *Suspension*, shall find, that he ought so to do: And in case *Bonds* be not taken, for the whole Sums that shall be decerned by the *Lords*, the *Clerk to the Bills* will be lyable to the *Parties* for their *Damnages*; This *Bond* lyes in the Office of the *Bill-Chamber*, and an *Extract* thereof is given to the *Charger*.

Upon Receipt of the *Bond*, the *Clerk to the Bills* Writs the *Deliverance* upon the *Bill of Suspension*, and with the *Ordinary* signs the same, And it is thus,

Apud Edinr. XXIII Augusti, One Thousand Seven Hundred and Ten.

*Fiat summonitio ut petitur, To the first Day of November next to come, with continuati-
on of Days; And to Suspend and Discharge
ut infra, in the mean time till the Tenth
Day of the same Moneth, Because A, is be-
come Cautioner for the Complainer, to the ef-
fect within written.*

Upon this past *Bill*, the *Letters of Suspension* are written and expede in the ordinary Form,
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and a Copy thereof, by a Messenger, or any other Person, as Sheriff in that part, may be delivered to the *Charger*, who, till the *Suspension* be discussed, is interpellated from all Personal Diligence, and from Poinding of Moveables, and if he use Arrestment, the same is lousable upon Caution, whereas if Arrestment upon a Decreet, was laid on, before the *Suspension* was presented, the same cannot be loosed: The *Charger* during the *Suspension*, may do all manner of real Diligence by Adjudication, or the like, but they will not take effect, nor can Execution pass thereon, till the *Suspension* be Discuss'd.

If, before the *Suspension* be expedite, the *Charger* be desirous to have the Matter speedily discuss'd, he gives in a *Petition* for a *Warrant*, to discuss the *Reasons* summarily on the *Bill*, as is declar'd in the *Case* of *Advocations*; but then he tacitely Renounces the Security of a *Cautioner*, who is only found by the *Suspender*, in case the *Bill* be expedite.

If the *Bill* of *Suspension* be of a *Multiple Distress*, and be craved against many *Chargers*; Albeit one of them seek the *Reasons* to be summarily Discuss'd on the *Bill*, the *Letters* must be expedite, as to the other *Chargers*, seeing a *Warrant* to Discuss Summarily, obtained by one of them, will not operate universally, except all be concurring, because it is not in the Power of one of them, to force the others to quite the

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benefite and Security of a *Cautioner*, which the *Suspender* will be forced to find, nor is the *Suspender* secure, against the other *Chargers*, until he expedie the *Suspension* against them: And in order to discuss the *Competition*, the *Suspender* must also raise a *Summons* of *Multiple-Poinding*, and call the whole *Chargers*, since no body is obliged to *Answer*, in the *Competition* among many *Chargers*, except they be called under a *Certification*, which is done by a *Summons* of *Multiple-poinding*.

The *Letters* of *Suspension* are called for at the *Minute-Book*, and *Protestation* put up for not produceing thereof, And when produced, they are given out to be seen, *Returned*, *Enrolled* and *Called* before an *Oordinary*, (otherways, *Protestation* will be *Extracted*;) in the same way and manner, as has been said of *Advocations*, (a) with this difference, That in a *Suspension* of *Multiple-Poinding*, any of the *Chargers* that pleases may put up *Protestation*, and call for the *Letters* of *Suspension*, but the *Suspender* is not oblig'd to produce at the *Minut-Book*, to any of them, his *Principal Letters*, for a *Copy* will be received, and will stop *Protestation*, and he cannot be forc'd to produce the *Principal Suspension*, except

(a) Reg. 14, 15, 16, 17. 18.

cept all the *Chargers* concur in putting up *Protestation*, or when all the *Chargers* have one after another call'd for it, he must produce it to the last seeker of *Protestation*, The Reason whereof is, because till the whole *Chargers* put up *Protestation*, the *Principal Suspension* must be kept by the *Suspender* to defend himself in case any of the other *Chargers* shou'd offer to take him with *Caption*, or to *Pound* his Goods.

When *Protestation* is obtained and *Extracted* for not producing of a *Suspension*, the *Charger* may proceed in *Diligence*, in the same way, as if no *Suspension* had ever been past; or, as if the *Letters* had been orderly proceeded, to obviate which the *Suspender* presents a new *Suspension*, not only of the *Protestation*, in so far as concerns the *Protestation Money*, but also of the *Grounds* of the first *Charge*, and Repeats the former *Reasons* of *Suspension*, and gives new ones, for purging his neglect, for not producing his former *Suspension*.

If any new *Reasons* of *Suspension* occur, after expeding the *Letters*, the same should be eiked and given out with the *Principal Letters*, to be seen by the *Charger*, and his *Procutor*, Nevertheless *Advocats* are in use, to produce *Incidenter Writings* to verify the *Reasons*, and likeways to *propone* such, as are neither *Lybelled* nor *Eiked*.

The *Charger*, at the out-giving of his *Charge*, i. e. his *Decreet*, *Regiſtred Bond*, or other ground of *Claim*, whereon the *Letters of Horn- ing* are *Raiſed*, needs not give out the *Letters* themſelves, for the outgiving of the *Decreet* alone is ſufficient, and if the *Debt* exceed not 40 *lib. Scots*, the *Precept* of an *Inferiour Court*, without the *Decreet*, is a ſufficient out-giving, and *Inſtruction* of a *Charge*.

If, at calling the *Suſpenſion* before the *Ordinary*, the *Charger* be abſent, and no *Charge* produced, the *Ordinary* will *Suſpend* the *Letters*, until the *Charge* be produc'd, If the *Charger* compearing, be found *Calumnious* or *Malicious*, the *Lords* will *Decern* him to pay the whole *Expence* and *Damnage*, ſuſtained by the *Suſpender*, in *Diſcuſſing* the *Suſpenſion*, conform to *Accompt*, without any *Eaſe* or *Defalcation*: For *Payment* of which *Expence*, the *Suſpender* *Petitions*, in the ſame way, as ſhall be ſhown to be done, by the *Charger*.

But if the *Charger* inſiſt, and produce his *Charge*, and if the *Suſpender*, either be abſent, or produce not his *Suſpenſion*, at calling the *Cauſe*, the *Charger's Procurators* crave *Proteſtation*, which is granted, and this is called a *Judicial Proteſtation*, the *Warrand* whereof is Signed by the *Ordinary*, as was ſaid, concerning *Proteſtations*, and *Remits* in *Advocations*, And by a late *Act of Seſſerunt*, It is Or-
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dained, That where a Judicial Protestation is admitted by the Lord Ordinary, through keeping up of Suspensions, unless the Cause be again called, and the Suspension produced the same week, before the Clerk can, after that, receive the Suspension, or the Suspender can be Reponed against that Protestation, he shall pay to the Charger, or to the Clerk for his behoof, Ten Shillings Sterling, and till this Sum be payed, the Clerks are discharged to write upon the Process, otherways to be lyable for the double.

When both Parties compear, the Charger's Procurator Repeats his Charge, which if it was for Protestation-Money, lying consigned in the hands of the Clerk to the Bills, he craves from the Lord Ordinary a Warrant or Order to the Clerk of the Bills, for delivering to the Charger the Protestation-Money, consigned at expeding the Suspension, which is accordingly granted, except the Suspender in his Reasons of Suspension, prevail, which he seldom does: Thereafter the Charger repeats his Charge in the Principal Cause, which was formerly Suspended, for not producing of which Suspension, Protestation was granted, and craves, that the Letters may be found orderly proceeded: And if the Suspender make no Answer, the Lord Ordinary Decerns; &c. Against which Decreet finding the Letters orderly proceeded, for not debating the Reasons of Suspension, the Suspender will not be Reponed, nor allowed to propound his Reasons,
till

till the Sum of Ten *shillings*, appointed by an *Act* of *Sederunt*, be payed by him to the *Charger*, or to the *Clerk* for his behoof, unless *Application* be made to the *Ordinary*, and a stop in *Writing* obtained, within six free Days after the date of the *Decreet*, and the *Clerks* are discharged to Write on the *Process*, till the said Sum be payed, otherways to be lyable for the double: In this, and all other *Cases*, where *Acts* or *Decreets* are sought to be stoped, the *Lords* have discharged verbal stops, and they Ordain all written Stops to be subjoined to a Representation, craving the same, and have declared, that they shall not continue, above a Fortnight in time of *Session*; And, if granted in time of Vacance, shall not endure, after the eight Day of the down-sitting of the next *Session*, except the said Stops be renewed.

If the *Suspender* Debate his *Reasons* of *Suspension*, and the *Charger* make *Answer* thereto, the Cause is Plead and insisted in, after the same manner, as in *Advocations*.

In like manner, at Calling a *Suspension* of a *Decreet* of *Exhibition*, the *Charger* craves *Warrant*, for transmitting, to the *Clerk* of the *Process*, the *Writings* lying consigned in the *Bill-Chamber*, after which, he proceeds to repeat his *Charge*, by craving, that the *Letters* may be found orderly proceeded, for Payment of the *Expences* of *Plea* contained in the *Decreet*, which the *Ordinary* for the most part Modifies, except

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except the *Suspender* purge his *Contumacy*, and as to the *Exhibition* it self, the *Reasons* of *Suspension* are repeated, intimating, that the *Suspender* is ready to *Depone*, that he has no *Writings* belonging to the *Charger*, or, that, at passing the *Bill* of *Suspension*, he *Exhibited* all he had, and is content to *Depone* thereupon; In which case, the *Ordinary* either *Assigns* a short *Day* to the *Suspender* to *Depone*, or finds the *Letters* orderly proceeded, and *Decerns* conditionally to a certain *Day*, betwixt and which the *Defender* is allowed to *Depone* and *Exhibit* in common *Form*.

The *Clerk* to the *Bills*, and his *Deputes* are *Ordain'd*, under the *Penalty* of five *lib. sterl.* to give up to the *Party* concerned, all *Protestation-Money*, to be consigned in their hands, without any *Fees*, upon sight of the *Extracted Protestation*, or *Decreet*, finding the *Letters* orderly proceeded, and a *Receipt* of the *Party* in a *Discharge*, expressing the substance and date of the *Warrant*, without necessity to leave the *Lords Warrant*: Which Order is to be observed, in uplifting all *Protestation-Money* lying formerly consign'd in the *Bill-Chamber*.

The *Reasons* of the *Suspension* (being either the generality of the *Copy* of the *Charge*, or *Nullities* of the ground thereof, *Informality* of the *Decreet*, whereupon *Letters* of *Horning* are raised, or the *Iniquity* of the *Inferior Judge*,) must be both *Relevant* and instantly *Verified*,
and

and besides, they must be competent to be *proponed* by way of *Suspension*, otherways, they will be reserved in an Ordinary *Action of Reduction* but generally speaking, whatever *Reason* is instantly verified or referred to the *Charger's Oath*, the same is admitted to be *proponed* in the *Suspension*.

Tho' a *Suspender* be obliged instantly to verify his *Reasons* of *Suspension*, or refer them to the *Charger's Oath*; Yet if they consist in fact, which cannot be instructed. but by extraneous Persons, he will in some Cases get a Day Assigned for proving thereof, with a *Diligence* against *Witnesses*, or *Havers* of *Writings*: As for exemple, he may prove, by the *Oath* of the *Members* of *Court*, where the *Decreet* was pronounced, such *Reasons* as are competent to be proven thereby, which cannot be done in *Advocations*: Moreover, when a *Cautioner* *Suspends*, and founds his *Reasons* on *Discharges* granted to the *Principal Debtor*, he will get an *Incident Diligence*, and will be allowed a *Term* for proving thereof: And in like manner, if *Probation* as accords, be needful, to instruct his *Reply* or *Triply*, &c. because they take *Rise* from the *Charger's Answer*, or *duply*, he will get a *Term* for proving thereof.

Other *Reasons* of *Suspension*, not instantly verifiable, are only competent, by way of *Action* in a *Reduction*; But the *Suspender*, that he may be allowed a *Term* for proving such

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Reasons, does at the time he craves *Suspension*, Raise *Summons* of *Reduction* against the *Charger*, upon the same *Reasons* contained in the *Suspension* and others, and founds his Bill upon the *Reduction*, which with the *Suspension* is given out to be seen: And if, at the calling the *Suspension*, he hold the *Production* satisfied, that is, if the *Writings*, craved to be reduced, be all produc'd by the *Charger*, as the ground of his *Charge* (for a *Writing* must be produced, before it can be reduced) upon repeating his *Reasons* of *Suspension*, and *Reduction* as coincident, he will get the same *Terms* in both *Processes*: But, if the *Suspender* will not hold the *Production* satisfied by the *Charger*, he must Debate the *Reasons* of *Suspension* alone, And if they be found incompetent, or not presently, verified, the *Letters* will be found orderly proceeded in the *Suspension*, i. e. that the *Charge* has been rightfully given, and that there is no *Reason*, why *Execution* upon the *Decreet* should be stopt; In which case, the *Process* of *Reduction* will not be receiv'd, but reserv'd to the *Suspender*, as accords. However, if the *Reasons* of *Reduction* be pregnant and plausible, and *Summons* seen by the *Charger*, so that the *Suspender* has done outmost *Diligence* towards calling thereof; The *Ordinary* will superceed *Extracting* the *Decreet* of *Suspension* for a time, in which the *Suspender* may get his *Reduction* called: which time will be afterwards prorogated

gated upon Supplication, if the *Lords* see cause. And albeit the *Decreet* of *Suspension* be *Extracted*, if there be *Reduction* depending, the *Suspender* oftentimes obtains a second *Suspension*, that he may have time, to conclude his *Reduction*, but the giving or *Extracting* of the *Decreet* of *Suspension*, is seldom delayed upon a *Reduction*, which was not raised or ready, the time of discussing the first *Suspension*.

Iniquity is an ordinary Reason of *Suspension* or *Reduction* of *Decrees* pronounced by *Inferior Judges*, but is not receivable, without a *Summons* of *Reduction* Executed against the *Charger*, yet *Iniquity* is not allowed to be proponed, against *Decrees* of the *Lords* of *Session*; It being most Rude and Censurable, to tell a *Judge* to his Face, that he has committed *Iniquity*: But tho' *Iniquity* is not openly Alledged against *Decrees* of the *Session*, yet it cannot be denied, but some may need a Review, and when the *Lords* find such, they allow the same to be proponed as a *Nullity*, *Informality*, or *Oversight* of the *Clerk*, or some such pretence.

When *Decreet* of *Suspension* is pronounced, and the *Letters* have been found orderly proceeded *Simpliciter*, so that the first *Charge* is no wayes limited or restricted, whereby it becomes manifest, that the *Reasons* of *Suspension* have been *Calumnious*, the *Charger* in a *Petition*, Represents the same to the *Lords*, and craves Payment of the *Expences* he has been at, in dis-

discussing the *Suspension*, conform to an *Accompt*, which he gives in with the *Petition*. Upon Reading whereof, the *Lords* in presence either consider the *Accompt* and Decern Payment, or modify the same, or else they *Remit* the consideration thereof, to the *Ordinary* in the *Cause*: And generally, the *Suspender* is *Decerned* to pay the *Expences* so Modified, and And the *Bill* with the *Interlocutor* is engrossed in the *Decreet* of *Suspension*. For, it is to be observed, that after a *Decreet* of *Suspension* is *Extracted*, a *Charger* is not allowed to present a *Petition* for *Expences*; which, by not being sought in due time, seems to be past from.

The *Decreet* of *Suspension* finding the *Letters* orderly proceeded, being *Extracted*, the *Horning* and other *Diligence* formerly raised may be put to farther *Execution*, as if the same had never been *Suspended*, provided, the former *Charge* be not expir'd, through Year and Day, elapsing since it was given, and no *Denunciation* nor *Registration* having followed thereupon, prior to the date of the *Suspension*, Or, that the *Charge* is not by the *Decreet* of *Suspension* limited and restricted. And, when the Old *Letters* and *Diligence* are put to *Execution*, the *Decreet* of *Suspension* should go along as a *Warrant*, in case the other *Party* should *Extract* his *Suspension* off the *Signet*, and stop the *Execution* of the *Letters* *Suspended*

thereby, on pretence, the *Suſpension* is not diſcuſſed.

If the former *Letters of Horning* be expired, or are not found orderly proceeded for the whole *Charge*, but only for a part; it is fit, to raiſe New *Diligence*, and *Letters of Horning* upon the *Decreet of Suſpension*: But, in both *Cases*, new *Letters* and *Diligence* muſt be raiſed for *Payment of Expences*, if any be *Decerned*.

The *Charger* may *Extract* the *Bond of Cautionry* out of the *Bill-Chamber*, and *Charge* the *Cautioner*, by *Letters of Horning*, for *Payment of the Debt*. For, after diſcuſſing of the *Suſpender*, the *Cautioner* becomes lyable to the *Charger*.

By a late *Act of Sederunt*, Mentioning, that the *Lords* having obſerv'd, That where *Decreets* either of the *Lords* themſelves, or of *Inferiour Courts* are *Suſpended*, the *Cautioner* claims to be freed, if the *Decreet Charged on* be turned to a *Lybel*, which the *Lords* think unreasonable. And ſeing *Chargers* do oft give way to the paſſing of *Suſpensions*, in reſpect of the ſolvency of the *Cautioner* offered: Therefore, to aſcertain the *Leidges* in time coming, The *Lords* have Declared, they will find the *Cautioner* ſimply Lyable in his *Order* for all that ſhall be *Decerned* by the *Lords*, whether the *Decreet* be turned into a *Lybel*, or not.

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The *Cautioner* being *Discussed*, then *Action* is competent against the *Attester*, who will be *Lyable subsidarie* in his *Order*, as fully as the *Cautioner* himself.

If the *Clerk* to the *Bills* has accepted of an insufficient *Cautioner* or *Attester*, then *Subsidiary Action* is competent against him, or the *Principal Clerks*, and even against the *Clerk-Register*.

When *Parties* conceive themselves *Les'd* by the *Sentence* of the *Lords of Council and Session*, either in *Ordinary Actions*, or in *Discussing Suspensions*, *Reductions*, &c. and have in vain made use of the ordinary means for getting *Redress*, There remains no other *Remedy*, than that of *Protesting* to the *Lords Spiritual and Temporal* in the *Parliament of Great Britain*, for *Remedy of Law*, which is done, in manner following,

TIT.

TIT. IV.

*Of Proteſtations, for Remedy
in Law.*

BY an *Article* of the *Claim of Right*, in the Year 1689, It is Declared, That the Subject hath full Priviledge, to *Proteſt* to *King* and *Parliament*, for *Remedy in Law*, againſt the *Sentences* of the *Lords of Session*: Provided, theſe *Proteſts* ſtop not the *Execution* of the *Decreet* pronounced.

According to which *Law*, both *Purſuers* and *Defenders*, who have conceived themſelves *Leſed*, have from time to time made uſe of this *Priviledge*; which is done in this manner, Within the ſpace of Ten Days, after pronouncing the *Sentence* Complain'd of, the *Party Leſed*, or an *Attornye*, by a *Writing* under his hand, Empowered to *Proteſt*, *Compears* at the *Inner-Houſe-Bar*, while the *Lords* are fitting, and produces a *Writing* Signed by himſelf or *Conſtituent*, mentioning one or moe of the *Interlocutors*, whereby the *Party* thinks himſelf to be prejudg'd, with one or moe of the *Reaſons*

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sons, for which, he conceives, these *Interlocutors* should be *Revers'd*, And for *Remedy in Law* against the same, the *Party*, or an *Attorney* in his Name, *Protests* to *King* and *Parliament*, and thereupon, they crave *Instruments of Court*, which *Written Protestation*, with a piece of *Money*, in name of *Instrument-Money*, is delivered to the *Clerk* to the *Process*, or to any other of the *Inner-house-Clerks*, and the *Lords* do *Admit* the *Protestation*, but because the *Clerks* do not give *Extracts* of such *Instruments*, without special Order from the *Lords*, the *Party* *Protesting* brings with him a *Notar*, in whose hands likewise he takes *Instruments*, before *Witnesses* present. And this is the *Copy* which is made use of, in prosecuting the *Appeal*; Which before the *Union of Scotland and England* was by the 2d *Act Parl.* 1695. Ordered to be done as follows. The *Party* that had *Protested* for *Remedy of Law*, was to have caused form a *Bill*, containing the *Matter* of his *Cause* or *Complaint*, which being *Signed* by him, or by his *Advocat*, and also by one of the *Six Clerks of Parliament*, was to be presented to one of the *Officers of State*, or to the *President* of the *Parliament* sitting at the time, or to any of them; In order to be past in course, to be a *Warrant* for a *Summons* issu'd out in name of the *Sovereign*, under the *Signet* of the *Session*, directed to *Maceys*, for citing the *Party* *Defender*.

fender therein, if within the Town of *Edinburgh*, upon 48 Hours; if elsewhere, within the Kingdom of *Scotland* (except *Orkney* and *Zetland*) upon 15 Days Warning; or if in *Orkney* or *Zetland*, upon 40 Days Personally, or at his Dwelling Place; or, if without the Kingdom, upon 60 Days Warning, at the *Mercat-Cross* of *Edinburgh*, *Pear* and *Shoar* of *Leith*, To compear before Her, or His Majesty, and the *Estates* of *Parliament*, when or where they should be met at the time, with continuation of Days, and Certification in Common Form. This *Summons* contain'd a *Warrant* for Citing *Witnesses*, as is usual before the *Lords* of *Council* and *Session*: And if any *Adjournment* of *Parliament* one or moe shou'd happen to interveen, between the giving of these *Citations*, and the Day of *Compearance*, the *Summons* was nevertheless ordain'd to stand in Force, for obligeing the *Parties* and *Witnesses* to Compear at the Day, to which the *Parliament* was *Adjourn'd* or when ever the same should first meet: And it was farther Enacted and Declared, that on the said Day of *Compearance*, or any other Day thereafter, during the Sitting of the *Parliament*, at the opening of the *House*, the *Clerks* might at the *Patent Gate* of the *Parliament-House*, Call the foresaid *Summons*: And if the *Party Summoned* did Compear, they marked the *Compearance*,

ance, and the *Summons* with the *Executions* and *Instructions* thereof, were giv'n out to be seen, and were return'd in six *Days* thereafter, as is done before the *Lords* of *Session*. After which, the *Process* was ready to be Called and Plead'd before the *Parliament*: But if the *Defender* was Absent at this Calling, no *Decreet* could be pronounced, till special *Application* by *Bill*, was for that end made, to the *King* or his *Commissioner* and *Estates* of *Parliament*.

Since the *Union* of the *Two Kingdoms*, The *Protestation*, or *Appeal* for *Remedy in Law*, is prosecuted before the *Lords* *Spiritual* and *Temporal*, in the *Parliament* of *Great Brittain* Assembled; But the *Action* thereon is prosecuted according to the *Rules* prescrib'd by the *Laws* of *South-Brittain*, to be known from th' *English Law-Books*, to which I refer.

But, because I have giv'n the manner, how *Summons* for *Remedy in Law*, was brought to the *Parliament* of *SCOTLAND*, I shall shew how, since th' *Union*, such *Process* is lay'd before the *House* of *Peers*, and it is thus: The *Party* ag-griev'd presents to the *Right Honourable*, the *Lords* *Spiritual* and *Temporal* in the *Parliament* of *Great Brittain* Assembled, a *Petition* holding forth a full *Information* or *Declaration* of his *Case*, and of the *Interlocutor* or *Sentence* one or more, pronounc'd therein, and that, after the pronouncing of the *Decree*, he in due time,

according to the *Law of Scotland*, did, for preservation of his *Right and Remedy of Law*, *Protest* against the said *Decree*, and subsumeth, that he is advis'd, that the said *Sentence*, or *Decree* of the *Lords of Council and Session*, is *Erroneous*, and ought to be *Reversed*, and set aside, for that thereby it is *Decreed* (here the *Errours* of the *Sentence*, and the *Reasons* for *Reversing* thereof are set down) And therefore, and for diverse other *Reasons*, appearing in the proceedings of the *House*, the *Petitioner* conceiveth himself agrieved, by the said *Decree* and *Sentence* of the *Lords of Council and Session*; And that the *Petitioner*, being now destitute of *Relief* any where else, save before their *Lordships* in the *Parliament of Great Brittain Assembled*, humbly *Appealeth* unto their *Lordships*, from the said *Decree* and *Sentence* of the said *Lords of Council and Session*, bearing Date (here the *Dates* of one or more of these *Interlocutors* are mentioned) And *Prayeth* that the same may be *Reversed*, and such other *Order* and *Decree* made, for the *Petitioners* *Relief* in the said *Matter*, as to their *Lordships* in their great *Wisdom* shou'd seem meet; And in order thereunto, that their *Lordships* wou'd please to award the usual *Order* or *Summons*, *Requiring* the said *B.* by a short *Day* to give in his *Answer* thereunto (*i. e.* to the *Petition* and *Appeal*) And the *Petitioner* shall ever *Pray*, &c. This is sign'd by the *Appellant*, and by

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A Protestation for Remedy in Law. 155

by his Counsel in Law, and deliver'd to the Clerk of the House to be Read. To which, the Lords, when they grant the Desire of the Petition, give Answer in this Form. *Die Jovis, 26 January 1710.* Upon Reading the Petition and Appeal of A from several Acts, Decrees and Proceedings of the Right Honourable, the Lords of Council and Session of SCOTLAND, in certain Causes, between B and the Petitioner Defendant, made, &c. (here the Date of the Sentences is set down) whereby the Petitioner is Adjudg'd to pay (here the Tenor of the Decree is briefly mentioned) Notwithstanding diverse just Objections thereunto, And Praying, that the saids Acts and Decrees may be Reversed and set aside, It is ordered by the Lords Spiritual and Temporal in Parliament Assembled, that the said B may have a Copy of the said Appeal, and And shall, and is hereby required to put in his Answer thereunto, on, or before Thursday, the 23 Day of February next, at 11 a Clock in the Forenoon. This is Signed by the Clerk of Parliament.

Any body may serve the Party with a Copy (*i. e.* deliver to the Party a Copy) of the Petition or Appeal, after which, he compears before a Judge, such as one of the Barons of Exchequer in SCOTLAND, and makes Affidavit in this manner.

C. D. Writer in Edinburgh, maketh Oath, That, conform to an Order of the Lords Spiritual

ritual and Temporal in Parliament Assembled, of the Date, &c. He hath served B, with a Copy of an Appeal of A. from several Acts, Decrees and Proceedings of the Right Honourable, the Lords of Council and Session of SCOTLAND: To the end the said B. may put in his Answer thereunto in Writing on or before, &c. Jur. coram me

Alex. Maitland.

Edin. 7. Feb. 1710.

This *Affidavit* is, in *England*, equivalent to an *Execution* of a *Messenger* in *SCOTLAND*.

Upon the Day appointed by the *House*, the *Petition* and *Answer* thereto, is *Read*; And in order to have the Matter fully understood, the *Appellant* (i. e. the *Prosecuter* of the *Appeal*) and *Respondent* give to the *Lords* a *Printed Case* (i. e. *Information*) Sign'd by the *Respective Counsel in Law*, and their *Lordships*, after hearing the *Counsel* of the *Parties*, at the *Barr* of the *House*, proceed to *Judgement*, by *Reversing* (i. e. *Reduceing*) or *Affirming* (i. e. *Confirming*) the *Decree* of the *Lords of Session*.

It is to be observed, that *Die Martis 19 Aprilis 1709*. It was ordered by the *Lords Spiritual and Temporal in Parliament Assembled*, That after an *Appeal* shall be received by their *House* from any *Sentence* or *Decree*, given or pronounced in any *Court* of *SCOTLAND*, and an *Order* made by the *House*, for the *Respondent* to *Answer* the said *Appeal*, and notice of such

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der duely served on the Respondent; The Sentence or Decree, so Appeal'd against, from such time, ought not to be carried on into Execution, by any Process whatsoever.

Because the Lords of Session, are vested with the Jurisdiction and Power which formerly belonged to the Commission of Parliament, for Planting of Kirks and Valuing of Tythes, and because several parts of the Form of Process in their Judging Causes differ from that they observe in the Session; I have thought fit to conclude with the following Title.

T I T. V.

Of the form of Process before the Lords of Session as Commissioners appointed by Parliament for Plantation of Kirks, Valuation and Sale of Tythes.

BY the 9th Act in the 4th Session of Her Majesties first Parliament of Scotland dated 21 February 1707. The Queen
and

and the Estates of Parliament, considering the great prejudice redounding to *Scotland* through the want of a fixt and established *Judicatory* which might cognosce and determine in such *Causes*, and Things, as by former *Parliaments* were referred to their *Commissions* for *Plantation of Kirks and Valuation of Tyths*, and through the loss of their *Registers*, which were burnt in the Fire that happenrd in *Edinburgh* in the Year 1700. Therefore they did Authorize Impower and Appoint the *Lords of Council and Session*, to Judge, Cognosce, and Determine in all *Affairs* and *Causes* whatsoever, which by the *Laws* and *Acts* of *Parliament* in *Scotland*, were formerly referred to, and did pertain, and belong to the *Jurisdiction* and *Cognisance* of the *Commissions* hitherto appointed for that effect, as fully and freely, in all respects, as the *Lords of Session* do, or may do, in other *Civil Causes*, and without prejudice to the foresaid generality to determine in all *Valuations* and *Sales of Tyths*, to grant *Augmentations* of *Ministers Stipends*, *Prorogations of Tacks of Tyths*, to disjoin too large *Paroches*, to erect and build new *Churches*, to annex and dismember *Churches*, as they should think fit, conform to the *Rules* laid down by the 19 *Act. Parl.* 1633. 23. and 30th *Act Parl.* 1690. and the 24 *Act Par.* 1693. in so far as the same stands unrepealed, and for that effect, the *Parliament* appointed the *Lords of Session*, to meet, and sit each

each *Wednesday* in the Afternoon, during the time of the *Session*, and to Call and Discuss the said *Causes*, conform to a Roll to be made up and kep't, and for supplying the lost Registers of that Court, It is Statuted, That any Authentick *Extract* from the Records thereof, should be brought in, and upon being presented to the Lords of *Session*, that they be recorded in a particular *Register*, and that the *Extracts* brought in, be kep't by the Lord Register, and his Deputs, Clerks to be appointed by him for that effect, as their Warrands, which shall be holden and reputed, equally valid and authentick, as the Principal *Warrands* themselves, if they were still extant, and the Lord Register and his Deputs, are ordained to give a new *Extract* thereof *Gratis* to every Person, who shall give in an old *Extract*, Immediatly upon delivery thereof, and that the *Extracts* from these new Records shall make the like Faith in Judgment, and out-with the same, as the *Extracts* from the old Records of the Commission were wont to do, before they were burnt; And the Lords of *Session* are Impowered upon such Evidence and Admicles, as they shall see Cause, to make up in manner abovementioned, the Tenor of Decrees, whereof *Extracts* are amissing, and the Register lost in the said Fire.

By the same Act it is Declared, That the Lord Register and his Deputs, shall have the
Sole

ſole Power and only Privilege of Raiſing and Subſcribing of the *Summons*, and *Diligences* relating to the Affairs abovementioned, the ſame always paſſing Her Majesties Signet as formerly.

The *Summons* in this Court have only one Dyet, and are Executed upon ſix Days againſt a *Defender* living in Scotland, and upon 60 Days, if they be out of this part of Great Brittain.

Formerly *Sheriffs* in that part as well as *Messengers* might Execute theſe *Summons*, But now *Executions* by *Messengers* only are in uſe.

When the Day, to which a *Defender* is Cited (which is called the *Day of Compearance*) is come, and bygone, The *Summons* is called by the Clerk of this *Commission* upon a *Wednesday* (which is the only Day of the Week, on which this Court ſits) betwixt two and three Hours in the Afternoon, and the *Calling* and *Compearance* for *Defenders* is marked, and the *Proceſs* given out to be ſeen, and when returned, is inrolled in the ſame way, as is done in the *Session*.

When a *Cauſe* is called by the Courſe of the Roll, if the *Pursuer* either compears not, or inſiſts not, the Lord *President* deletes it, and before this *Proceſs* be again Called, it muſt be Inrolled of new in the Books of *Inrolment*.

If

If the *Defender* compears not, or *propones* no *Defences*, the Lords sustain the *Pursuers Process*, and grant him either *Act* or *Decreet*, for they seldom, or never, continue *Causes*, because they meet in this *Court*, but once a Week.

When both *Parties* compear and contest, the *Pleading* and whole *Process* is managed in the same manner, as if it were agitated in the Inner-House, when this *Court* sits as *Lords of Session*, for in the *Commission*, there's no single *Ordinary* in the *Outer-House*, and all the *Disputes* are before the *Lords* in presence.

Commissions for taking the *Oaths*, either of *Parties*, or of *Witnesses* are granted, *Executed*, and *Reported* as in the *Session*.

The *Act* of *Litiscontestation* may be *Extracted* immediatly after pronouncing thereof, if it be not stop'd by a *Petition* delivered to the *Clerk*, betwixt the Day of pronouncing the *Act* and next *Sederunt*, otherways the *Clerk* cannot keep back the *Extract*: And again, all such *Bills* must be Read to the *Lords* the very next *Sederunt Day*, after they are presented to the *Clerk*.

Upon the Day Assigned by the *Act*, the *Party* causes call the *Act*, and if *Parties* or *Witnesses* be present, they make *Faith*: And, after rising of the *Court*, are Examined by the *Lord Ordinary*, specially appointed for *Oaths* and *Witnesses* belonging to this *Court*, who is the *Ordinary* in the *Outer-House* of the *Session* for

for that *Week*. But if at *Calling the Act*, none do Compear, the Term is circumduced, or if an *Advocat* compear, and seek a second *Diligence*, it is granted, as in the *Session*.

The *Depositions* are taken, *Writings* produced, and *Avifandum* made with the *Probation*, the *Process* is *Enrolled* in a *Roll of Causes* to be prepared, After which it is *Enrolled* in a *Roll of Causes Concluded*, and ready to be *Advised*, and when *Called*, according to the *Course* of this *Roll*, the *Cause* is pleaded and prosecuted in the same way and manner, as is shewed to be done, with respect to *Actions* before the *Session*.

By the said *Act Parl. 1707*. It is Statuted, That the *Transporting of Kirks*, *disjoining of too large Paroches*, or *Erecting and Building of new Kirks*, are always to be with consent of the *Heritors of three parts of four at least of the Valuation of the Paroch*, which is to be *disjoined*, and where the *New Kirk* is to be *Erected and Built*, the *Minister in the mean time*, serving the *Cure* in the present *Kirk of the Paroch*.

The *Decrees* in this *Court* cannot be *Extra-cted* till the next *Sederunt*, after that, in which it was pronounced, be *Elapsed*, To the end, that the *Party*, who *Judges* himself *Lesed*, may, by *Bill*, apply for *Redress*, but if he do not present such a *Petition*, betwixt, and the *Court Day*, immediatly following the date of the *Sentence*, The *Clerk* cannot stop *Ex-tracting*

tracting, if the Party concerned seek his Decree.

If any Person hath a Decree of the former Commissions, and desires to have the same Recorded, he presents a Petition to the Lords, Narrating that Clause of the Act of Parliament, which relates to making up of the lost Registers, And mentions, that the Decree produced, is an Authentick Extract from the Old Registers, And therefore craves, That the Lords would Authorize their Clerk, to Record the Decree, and to give out an Extract thereof, in the Terms of the Act of Parliament; Upon Reading, the Lords grant the desire of the Petitioner, and the Bill with the deliverance, is inserted in the beginning of the new Extracts of the Decrees so ordered to be Recorded: and the old Extract or Decree lyes in the Clerk's Office, as the Warrant, and is inserted in the Register-Books of the Court.

The Decrees of this, or former Commissions may be reduced by this Court, tho' they are not in use to pass Suspensions thereof, But if after Redress, is by Petition sought, against an Interlocutor, either in an Original Cause, or in a Reduction of a former Decree, and if by refusing the Desire of this Petition, the Party thinks himself prejudged, he may Protest for Remedy in Law, which is done the same way as was shew'd to be used, in entering Protests in the Session.



